SOUTHERN DISTRICT OF NEW YORK	7,	
E*TRADE FINANCIAL CORPORATION and E*TRADE SECURITIES LLC,	: :	
Plaintiffs,	:	
v.	:	No. 08 CV 2993 (RJH)
MARCUS J. HERNANDEZ,	: :	
SEAN J. GAFFEY, and BANC OF AMERICA	: :	
INVESTMENT SERVICES, INC.	: :	
Defendants.	: x	

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DECLARATION OF JEFFERY A. WIMER IN SUPPORT OF E*TRADE'S MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTIVE RELIEF IN AID OF ARBITRATION

JEFFERY A. WIMER declares as follows pursuant to 28 U.S.C. § 1746:

- 1. I am employed by E*TRADE Securities LLC ("E*TRADE") as Branch Manager, Retail Branch, at 135 East 57th Street, 12th Floor, New York, NY 10022 ("New York branch").
- 2. I make this declaration in support of E*TRADE's Motion for Preliminary Injunction in the above-captioned action against Marcus J. Hernandez ("Hernandez"), Sean J. Gaffey ("Gaffey"), and Banc of America Investment Services, Inc. ("BOA").
- 3. As Branch Manager of the New York branch, my duties include supervising employees, addressing issues surrounding the departure of E*TRADE employees and compliance with company policies to protect the confidentiality of customer information and E*TRADE proprietary information. As a Branch Manager, I regularly access E*TRADE's

databases about customer information, including their contact information and account histories.

I also regularly access E*TRADE's employee records, including employee email.

- 4. Beginning in February 2007, I supervised Hernandez and Gaffey at E*TRADE's New York branch. Hernandez and Gaffey were both E*TRADE Financial Advisors.
- 5. Hernandez and Gaffey are registered members of the Financial Industry
 Regulatory Agency ("FINRA"). FINRA provides publicly available records of each of its
 members, called "BrokerCheck Reports." These are available on the Internet. I have reviewed
 FINRA's BrokerCheck Reports for Hernandez and Gaffey, and it states that they are currently
 employed as financial advisers at BOA. I am attaching a copy of the current BrokerCheck
 Reports for Hernandez and Gaffey as Exhibits 1 and 2, respectively, which I obtained on the
 Internet at the website listed on the printouts.
- 6. BOA is a direct competitor of E*TRADE in the investment advisory and brokerage asset management business.

E*TRADE's Customer Relationships

- 7. The investment advisory and brokerage asset management industry is highly competitive, and is built on the development of long-term relationships with clients in need of investment advisory and wealth management services.
- 8. Because many products and services provided by competing firms offer capabilities and pricing that are similar, client decisions to place their business with a particular firm are often driven by the client's relationship with the firm.
- 9. In order to continue to build its business and maintain its reputation as a premier service provider in the industry, E*TRADE has expended substantial time, labor, and money to

attract, develop, service and maintain relationships with its clients and to find, train and develop its employees.

- 10. E*TRADE's goodwill and business relationships with its customers and employees are one its most valuable assets. Customers have many options in the industry and E*TRADE's ability to attract and retain customers is primarily dependent on the customers believing they receive superior attention and quality of services from E*TRADE at a competitive price.
- 11. E*TRADE employs Financial Advisors ("FAs") to enhance its relationship with many customers, particularly those who have large assets on deposit and generate substantial revenues for E*TRADE (generally known in the industry as "high net worth" individuals). Unlike other business models where a brokerage firm's FAs recruit customers and consider the customers their own "clients," E*TRADE's FAs are merely used in a support role and are not expected to actively solicit business from non-E*TRADE clients. E*TRADE's brokerage customers are recruited not by FAs but by E*TRADE's other business operations, such as marketing and internal referrals from other business lines (for example, E*TRADE Bank or E*TRADE Mortgage).
- 12. Instead, E*TRADE FAs provide services solely to either existing E*TRADE customers or customers who contact E*TRADE FAs in response to E*TRADE's corporate marketing and advertising. E*TRADE usually assigns a specific FA to a particular customer, so that the customer has a single point of contact with E*TRADE, which enhances the customer's view of E*TRADE. However, E*TRADE does not consider these customers to be the specific "clients" of the FAs. E*TRADE can and does reassign FAs between customers for a variety of reasons.

E*TRADE Confidential Information

- 13. E*TRADE maintains confidential information about its customers and trade secrets ("Confidential Information") in its databases. The databases include customer contact information, sensitive financial account information, trading histories, and logs of communications between the customers and E*TRADE employees and representatives.
- 14. E*TRADE has spent enormous resources to compile its Confidential Information. The information reflects years of E*TRADE's efforts to attract and maintain customers, as I explained above. E*TRADE's Confidential Information essentially embodies all of E*TRADE's marketing investments for years, all of E*TRADE's personal communications with customers, and E*TRADE's reputation in the industry.
- 15. E*TRADE's Confidential Information would be extremely valuable to E*TRADE's competitors like BOA. Competitors could use the information to contact E*TRADE's customers to solicit their business away from E*TRADE. The information also could provide each customer's unique situation, financial needs, and account history that would allow a competitor to tailor a "sales pitch" specific to that customer.
- Confidential Information contained therein. E*TRADE has expended enormous resources over many years to build its own internal, proprietary computer network. E*TRADE maintains the information only on these internal E*TRADE computer facilities, limits access to those employees having the need to know of it, and does not make the information accessible to non-E*TRADE individuals. All access to the information requires entry of specific user passwords. E*TRADE has a very large computer staff that constantly monitors E*TRADE's computer networks for unauthorized access.

- 17. E*TRADE trains all of its employees how to access and use the computer networks and in also trains employees not to release the information outside of E*TRADE.
- 18. E*TRADE maintains an internal written policy regarding employee access to and use of E*TRADE's Confidential Information. This policy is called the "Code of Professional Conduct." I am attaching some relevant excerpts of the Code of Professional Conduct as Exhibit 3.
- 19. All of E*TRADE's FAs sign employment agreements and expressly agree to comply with E*TRADE's Code of Professional Conduct. The employment agreements and E*TRADE's Code of Professional Conduct impose mandatory obligations to guard and maintain the confidentiality of E*TRADE's Confidential Information, including the personal financial information of its customers.
- 20. When an FA's employment with E*TRADE ends, regardless of reason,
 E*TRADE follows certain procedures to secure and guard its Confidential Information. Before
 leaving the building on the last day of employment, an FA must submit to a reasonable search to
 verify that Confidential Information is not being taken.
- 21. E*TRADE's Confidential Information is not generally known outside E*TRADE and cannot possibly be compiled without proper access to E*TRADE's confidential records.

 I cannot imagine how anyone could determine our lists of customers, short of conducting a house-to-house, nationwide survey. In addition, I cannot imagine how anyone could possibly learn each customer's account history and financial information without access to E*TRADE's confidential computer databases.

Hernandez's Employment Agreements With E*TRADE

- 22. On October 2, 2003, E*TRADE offered Hernandez employment in the position of Investment Specialist in the New York branch. The employment letter notified Hernandez of E*TRADE's confidentiality policies and enclosed a copy of E*TRADE's Proprietary Information Agreement. I obtained from Hernandez's E*TRADE employee records Hernandez's October 2, 2003 offer letter, and I am attaching as Exhibit 4 a true and correct copy of this letter
- 23. Hernandez's position as Investment Specialist was later renamed to Financial Advisor. As a financial advisor, Hernandez provided personal investment strategies and advice to E*TRADE customers.
- On October 7, 2003, Hernandez signed an E*TRADE Employment Agreement, 24. which incorporated the Proprietary Information Agreement. I obtained from Hernandez's E*TRADE employee records the "Employment Agreement Proprietary Information and Inventions and Arbitration of Employment Disputes" between E*TRADE and him, and I am attaching as Exhibit 5 a true and correct copy of this agreement.
- 25. On October 7, 2003, Hernandez also signed an Acknowledgement that stated he had received a copy of the E*TRADE Code of Professional Conduct and that he had or would thoroughly review it. A true and correct copy of Hernandez's executed October 7, 2003 Acknowledgement, which I obtained from Hernandez's E*TRADE employee records, is attached as Exhibit 6.
- Again on December 11, 2006, Hernandez signed an Acknowledgement stating 26. that he had received a copy of the E*TRADE Code of Professional Conduct and that he had reviewed the contents of the Code of Professional Conduct. A true and correct copy of

Hernandez's executed December 11, 2006 Acknowledgement, which I obtained from Hernandez's E*TRADE employee records, is attached as Exhibit 7.

Hernandez's Access To E*TRADE's Confidential Information

To perform his job responsibilities and serve the needs of E*TRADE's customers, 27. Hernandez was entrusted with E*TRADE's Confidential Information, including customer lists containing customer contact and financial information, as well as E*TRADE marketing strategy, business plans and proprietary data.

Hernandez's Resignation

- 28. On November 19 or November 20, 2007, at his request Hernandez transferred from the New York branch to an [another] E*TRADE branch located at 150 Allendale Road, King of Prussia, PA 19406-2926, near Philadelphia. E*TRADE granted Hernandez's transfer request as a benefit designed to reward and retain employees.
- 29. Hernandez abruptly resigned on January 18, 2008, two months after transferring from the New York branch. A true and correct copy of Hernandez's resignation letter, which I obtained from Hernandez's E*TRADE employee records, is attached as Exhibit 8.
- 30. Pursuant to E*TRADE policy, I checked Hernandez's email account on the day of his resignation to determine if he had improperly sent any E*TRADE Confidential Information to a non-E*TRADE email account.
- 31. I discovered that on November 19, 2007, before Hernandez moved from the New York branch, he had emailed eight computerized spreadsheets that resided on E*TRADE's computer system ("Spreadsheets") from his E*TRADE work email account to his personal home email account. This email is attached as Exhibit 9.

- 32. The Spreadsheets contained E*TRADE's Confidential Information and trade secrets, including:
 - A client list containing personal information for 257 E*TRADE clients, including their names, addresses, telephone numbers, and account numbers;
 - For 2006, a monthly and quarterly breakdown of the gross monetary production report for all E*TRADE financial advisors, including a detailed breakdown of how much of each type of financial product (such as mutual funds, CDs, and bonds) that each financial advisor sold:
 - For 2003-2006, a monthly breakdown of sales transaction categorized by date of transaction, type of investment sold, buy/sell information, and account information, including monthly summaries regarding gross/net sales figures; and
 - A spreadsheet that contains account numbers and other information concerning E*TRADE bond clients.
- 33. The spreadsheet containing the breakdown of financial advisor production in 2006 listed Hernandez as the top producer and Gaffey as the fifth highest producer in the company.¹
- 34. There was no legitimate reason for Hernandez to email proprietary information to his personal email account. E*TRADE documents are stored in a computer database that an authorized user may access from any E*TRADE computer terminal. Before and after his transfer from the New York branch to the King of Prussia branch, Hernandez could access the same documents from the computer database from either location.
- 35. On January 23, 2008, E*TRADE sent Hernandez a letter regarding "Change of Employment," which expressly reminded Hernandez that he continued to be bound by the confidentiality agreement he signed upon starting employment with E*TRADE. A true and

In reviewing E*TRADE employee records for other recent resignations of financial advisors, I also noted that Joseph S. Reilly ("Reilly"), another E*TRADE financial advisor who worked with Hernandez and Gaffey in New York, resigned from E*TRADE effective immediately and became an employee of BOA. A true and correct copy of Reilly's resignation letter, which I obtained from Reilly's E*TRADE employee records, is attached as Exhibit 10. Reilly was the third highest producing financial advisor at E*TRADE.

correct copy of the letter sent to Hernandez from E*TRADE dated January 23, 2008, is attached as Exhibit 11.

Gaffey's Employment Agreements With E*TRADE

- 36. On October 8, 2004, E*TRADE offered Gaffey employment in the position of Retail Sales Representative in the New York branch. The employment letter notified Gaffey of E*TRADE's confidentiality policies and enclosed a copy of E*TRADE's Proprietary Information Agreement. I obtained from Gaffey's E*TRADE employee records Gaffey's October 8, 2004 offer letter, and I am attaching as Exhibit 12 a true and correct copy of this letter.
- On October 26, 2004, Gaffey signed an E*TRADE Employment Agreement 37. which incorporated the Proprietary Information Agreement. I obtained from Gaffey's E*TRADE employee records the "Agreement Regarding Employment and Proprietary Information and Inventions" between E*TRADE and him, and I am attaching as Exhibit 13 a true and correct copy of this Agreement.
- On October 26, 2004, Gaffey also signed an Acknowledgement stating that he had 38. received a copy of the E*TRADE Code of Professional Conduct and that he had or would thoroughly review it. A true and correct copy of Gaffey's executed October 26, 2004, Acknowledgement, which I obtained from Gaffey's E*TRADE employee records, is attached as Exhibit 14.
- 39. Again on December 11, 2006, Gaffey signed an Acknowledgement stating that he had received a copy of the E*TRADE Code of Professional Conduct and that he had reviewed the contents of the Code of Professional Conduct. A true and correct copy of Gaffey's executed

December 11, 2006 Acknowledgement, which I obtained from Gaffey's E*TRADE employee records, is attached as Exhibit 15.

40. Gaffey was later promoted to the position of Financial Advisor, the same position as Hernandez. As a financial advisor, Gaffey provided personal investment strategies and advice to E*TRADE customers.

Gaffey's Access To E*TRADE's Confidential Information

41. To perform his job responsibilities and serve the needs of E*TRADE's customers, Gaffey was entrusted with E*TRADE's Confidential Information, including customer lists containing customer contact and financial information, as well as E*TRADE marketing strategy, business plans and proprietary data.

Gaffey's Resignation

- 42. Gaffey resigned on February 22, 2008, and at that time handed me an envelope containing his resignation letter, and I am attaching as Exhibit 16 a true and correct copy of that letter.
- 43. On February 25, 2008, E*TRADE sent Gaffey a letter regarding "Change of Employment" which expressly reminded Gaffey that he continued to be bound by the confidentiality agreement he signed upon starting employment with E*TRADE. A true and correct copy of the letter sent to Gaffey from E*TRADE dated February 25, 2008, is attached as Exhibit 17.

Hernandez's Access To E*TRADE's Confidential Information

44. To perform their job responsibilities and serve the needs of E*TRADE's customers, Hernandez and Gaffey were entrusted with E*TRADE's Confidential Information,

including customer lists containing customer contact and financial information, as well as E*TRADE marketing strategy, business plans and proprietary data.

Customer Contacts After Hernandez's And Gaffey's Departures

- 45. Upon an FA's departure, E*TRADE has a standard procedure to contact the specific customers whom that FA services. Consistent with this standard procedure, I directed E*TRADE employees to contact the customers whose accounts were serviced by Hernandez and Gaffey after their resignations. It is E*TRADE's policy and standard practice that, when making these contacts with customers, E*TRADE representatives must make contemporaneous notes regarding the conversations. These contemporaneous notes are recorded in E*TRADE's confidential customer databases, to which I have access.
- 46. I have reviewed the notes made in the ordinary course of business by E*TRADE representatives who contacted the customers previously serviced by Hernandez or Gaffey. These notes indicate that many customers reported that they had been solicited by via telephone and in writing by Hernandez or Gaffey after their resignations from E*TRADE. Hernandez and Gaffey encouraged high net worth customers to transfer their accounts from E*TRADE to BOA. The mailings to customers are believed to contain Transfer of Account ("TOA") forms already filled in with the customers' information; by merely signing this unrequested form, the customer's account would be transferred to BOA.
- 47. Many other customers complained and expressed outrage that their personal information was in the hands of a former E*TRADE employee without the customers' consent. Customers also stated that Hernandez and Gaffey made inflammatory, disparaging and inaccurate remarks about E*TRADE, including questioning the solvency of E*TRADE and falsely stating or implying that the assets of E*TRADE customers were at risk. This last remark

is demonstrably false, because E*TRADE maintains numerous types of insurance that fully protect all of the accounts and customer deposits that Hernandez and Gaffey serviced.

48. As a result of Hernandez's and Gaffey's solicitations, some customers have left E*TRADE. Other customers, persuaded by what Hernandez and Gaffey told them, have questioned E*TRADE's solvency, the safety of their assets contained in E*TRADE accounts, and the security of their personal financial information.

Specific Customer Contacts and Comments -- Hernandez

- 49. The following are examples of E*TRADE customer solicitations by Hernandez based on my review of notes maintained in E*TRADE's records following Hernandez's departure:
- 50. Hernandez telephoned E*TRADE customer Frederick K. and told this customer that he should move his accounts to BOA because "E*TRADE was not secure" financially and therefore "his assets were in jeopardy."
- 51. Hernandez telephoned E*TRADE customer Jerry R. and told this customer that he should move his move his accounts to BOA because E*TRADE was "unstable" and its "financial picture was bleak."
- 52. Hernandez telephoned E*TRADE customer Dan G. and sent him a BOA business card. Hernandez told this customer that he (Hernandez) was working on a proposal to get the customer to move his accounts from E*TRADE to BOA.

Specific Customer Contacts and Comments -- Gaffey

- 53. The following are examples of E*TRADE customer solicitations by Gaffey based on my review of notes maintained in E*TRADE's records following Gaffey's departure:
- 54. Gaffey telephoned E*TRADE customer Ira C. and told him that the customer should move his accounts from E*TRADE to BOA because E*TRADE was having "solvency issues."
- 55. Gaffey solicited by telephone E*TRADE customers Michael T., Robert C., and Dr. S. and asked them to move their accounts to E*TRADE from BOA.
- 56. The above examples and quotations are taken from notes contemporaneously kept in the ordinary course of business by E*TRADE employees memorializing the conversations with these customers.

Continuing Harm To E*TRADE

- 57. E*TRADE has attained, and can only maintain, its present position in the investment advisory and wealth management industry by preserving the confidentiality of its Confidential Information, including but not limited to its business plans and strategies, price lists and sales methods, customer and prospect lists and other customer information.
- 58. Unless Hernandez and Gaffey are enjoined from the conduct described above, E*TRADE will be irreparably harmed by the loss of confidentiality of customer information, loss of confidentiality of customers' dealings with E*TRADE, loss of confidence and trust of customers, loss of revenue from existing and prospective customer relationships, loss of E*TRADE's goodwill, and loss of business reputation.
- 59. I cannot estimate the money E*TRADE will lose or has been damaged by Hernandez's and Gaffey's conduct. I cannot predict how much future revenue E*TRADE would

have made from the customers whom Hernandez and Gaffey solicited away from E*TRADE.

I also cannot predict how much money E*TRADE has lost as a result of other future business from these customers or potential referrals from them. Even for customers who remain with E*TRADE, I cannot calculate how much E*TRADE's relationship has been damages as a result of Hernandez and Gaffey shaking their confidence or view of E*TRADE.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Executed this _____day of March, 2008, at New York, New York.

JERFERY A WIMER

E*TRADE Branch Manager, Retail Branch

CERTIFICATE OF SERVICE

Document 5

I, Douglas P. Lobel, state that on the 25th day of March, 2008, I served the following by FedEx overnight service: Declaration of Jeffery A. Winer in Support of E*TRADE's Memorandum in Support of Plaintiffs' Motion for Preliminary Injunctive Relief in Aid of Arbitration, to the following parties:

Banc of America Investment Services, Inc. c/o CT Corporation System, Its Registered Agent 111 Eighth Avenue New York, New York 10011

Marcus J. Hernandez (home address) 229 Canterbury Court Blue Bell, Pennsylvania 19422-1279

Sean J. Gaffey (home address) 550 Gregory Avenue, Apt. B7 Weehawken, New Jersey 07086-6001 Marcus J. Hernandez (office address) Banc of America Investment Services, Inc. 4 Sentry Parkway Blue Bell, Pennsylvania 19422

Sean J. Gaffey (office address) Banc of America Investment Services, Inc. 400 Kelby Street, 19th Floor Fort Lee, New Jersey 07024

/s/ Douglas P. Lobel Douglas P. Lobel

EXHIBIT 1

Broker Qualifications

2-4

About this BrokerCheck Report

Registration and Employment History

BrokerCheck Report MARCUS JOHN HERNANDEZ CRD# 4218478

Report #24256-86984 generated on Tuesday, March 18, 2008.

Section Title Page(s)
Report Summary 1



Dear Investor:

FINRA brokerage firm(s) and securities regulators as contained within this report has been provided by a FINRA has generated the following BrokerCheck Depository (CRD®) part of the securities industry's registration and report for MARCUS J. HERNANDEZ. The information information reported to the Central Registration icensing process and represents the most current

practice violations against brokers, all felony charges FINRA regulates the securities markets for the ultimate benefit and protection of the investor. FINRA believes with creditors, judgments, and liens. and convictions, misdemeanor charges and customer disputes that contain allegations of sales regulatory actions, investment-related civil suits, financial events such as bankruptcies, compromises convictions relating to securities violations, and you. Examples of information FINRA provides include policy to make certain types of information available to continue to conduct, business with a FINRA member that will help them determine whether to conduct, or the general public should have access to information To that end, FINRA has adopted a public disclosure

withdrawn or dismissed, or resolved in favor of the allegations that may be contested and have not been it may include items that involve pending actions or settlement with no admission or finding of wrongdoing individual broker, or concluded through a negotiated resolved or proven. Such items may, in the end, be When evaluating this report, please keep in mind that

Document 5-2

as much as possible about the individual broker or firm you should consult. FINRA recommends that you learn family members who already have established investment business relationships local consumer and investment groups, or friends and from other sources, such as professional references, The information in this report is not the only resource

> complete list of state securities regulators. securities regulator. Refer to www.nasaa.org for a and may provide additional information on brokers State disclosure programs are governed by state law Securities and Exchange Commission (SEC) FINRA BrokerCheck is governed by federal law, consider requesting information from your state regulations and FINRA rules approved by the SEC. licensed by the state. Therefore, you should also

Thank you for using FINRA BrokerCheck



Conditions. A complete list of BrokerCheck Terms and that you accept the FINRA Using this site/information means Ferms and Conditions can be

brokercheck.finra.org



www.finra.org/brokercheck. It refer to the User Guidance or the contents of this report, please For additional information about as well as additional resources. list of frequently asked questions, provides a glossary of terms and a INRA, visit www.finra.org. or more information about



CRD# 4218478 **MARCUS J. HERNANDEZ**

Currently employed by and registered with the following FINRA Firms:

4 SENTRY PARKWAY BANC OF AMERICA INVESTMENT CRD# 16361 BLUE BELL, PA 19422 SERVICES, INC.

Registered with this firm since: 01/2008

Report Summary for this Broker

User Guidance

broker, a FINRA-registered firm(s), and/or securities regulator(s) have provided the information contained in this report was last updated by either the broker, a previous employing brokerage firm, or a securities regulator on report as part of the securities industry's registration and licensing process. The information contained in this The report summary provides an overview of the broker's professional background and conduct. The individual

Broker Qualifications

This broker is registered with:

any regulator? No

Registration and Employment History

following FINRA firms: This broker was previously registered with the

E*TRADE SECURITIES LLC

CRD# 29106 10/2003 - 01/2008

AVALON PARTNERS, INC

NEW YORK, NY CRD# 41357 2/2002 - 08/2003

CORPORATION KUHNS BROTHERS SECURITIES

CRD# 47331

11/2002 - 02/2003 LIME ROCK, CT

Registration and Employment History section of this details as reported by the broker, refer to the For additional registration and employment history

1 Self-Regulatory Organization

42 U.S. states and territories

Is this broker currently suspended or inactive with

This broker has passed:

- 1 Principal/Supervisory Exam
- 2 General Industry/Product Exams
- 2 State Securities Law Exams

Disciplinary, and Regulatory Events **Disclosure of Customer Disputes,**

of the securities industry registration and licensing events reported by or about this broker to CRD as part charges and/or convictions, as well as financial by regulators, customer disputes, certain criminal process. Examples of such disclosure events include disclosures, such as bankruptcies and unpaid formal investigations and disciplinary actions initiated udgments or liens. This section includes details regarding disclosure

Are there events disclosed about this broker? No

Broker Qualifications

www.finra.org/brokercheck

category of each registration, and the date on which the registration status became effective. This section also provides information on the physical location of each branch that the broker is associated with, for each listed employment. This section provides the SROs, states and U.S. territories the broker is currently registered and licensed with, the Registrations

her employer. This individual is currently registered with 1 SRO and is licensed in 42 U.S. states and territories through his or

Employment 1 of 1

Firm Name: BANC OF AMERICA INVESTMENT SERVICES, INC

Main Office Address: 100 FEDERAL ST **HEADQUARTERS**

BOSTON, MA 02110

Firm CRD#:

SRO		Category	ory			Status	Date
FINRA		Genera	General Securities Representative	epresentative		APPROVED 01/18/2008	01/18/2008
U.S. State/ Territory	Category	Status	Date	U.S. State/ Territory	Category	Status	Date
Alabama	Agent	APPROVED	01/18/2008	Kansas	Agent	APPROVED	01/18/2008
Arizona	Agent	APPROVED	01/18/2008	Kentucky	Agent	APPROVED	01/18/2008
California	Agent	APPROVED	01/18/2008	Maine	Agent	APPROVED	01/18/2008
Colorado	Agent	APPROVED	01/18/2008	Maryland	Agent	APPROVED	01/18/2008
Connecticut	Agent	APPROVED	01/18/2008	Massachusetts	Agent	APPROVED	01/18/2008
Delaware	Agent	APPROVED	01/18/2008	Michigan	Agent	APPROVED	01/18/2008
District of	Agent	APPROVED	01/18/2008	Minnesota	Agent	APPROVED	01/18/2008
Florida	Agent	ADDROVED	01/18/2008	Missouri	Agent	APPROVED	01/18/2008
Georgia	A Gent		01/18/2008	Nebraska	Agent	APPROVED	01/18/2008
Hawaii	Agent .	\DDBQ\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\	04/40/2000	Nevada	Agent	APPROVED	01/18/2008
	A gent		04/40/2000	New Hampshire	Agent	APPROVED	01/18/2008
) <u>(</u>		01/10/2000	New Jersey	Agent	APPROVED	01/18/2008
	Agent	ATTROVED	01/18/2008	New Mexico	Agent	APPROVED	01/18/2008
Indiana	Agent	ATTROVED	8002/81/10	New York	Agent	APPROVED	01/18/2008
lowa	Agent	APPROVED	01/18/2008		9	•	



Wyoming

Agent

APPROVED

01/18/2008

Broker Qualifications

FINITA

User Guidance

Employment 1 of 1, continued	1 of 1, cont	tinued	
U.S. State/ Territory	Category	Status	Date
North Carolina	Agent	APPROVED	01/18/2008
Ohio	Agent	APPROVED	01/18/2008
Oklahoma	Agent	APPROVED	01/18/2008
Oregon	Agent	APPROVED	01/18/2008
Pennsylvania	Agent	APPROVED	01/18/2008
South Carolina	Agent	APPROVED	01/18/2008
Tennessee	Agent	APPROVED	01/18/2008
Texas	Agent	APPROVED	01/18/2008
Utah	Agent	APPROVED	01/18/2008
Vermont	Agent	APPROVED	01/18/2008
Virginia	Agent	APPROVED	01/18/2008
Washington	Agent	APPROVED	01/18/2008
Wisconsin	Agent	APPROVED	01/18/2008

Branch Office Locations

BANC OF AMERICA INVESTMENT SERVICES, INC. 4 SENTRY PARKWAY

BLUE BELL, PA 19422

Broker Qualifications

www.finra.org/brokercheck

Industry Exams this Broker has Passed

waivers or the grandfathering of an exam requirement are not included as part of the BrokerCheck report. may be grandfathered based on a broker's specific qualifying work experience. Information regarding instances of exam based on a combination of previous exams passed and qualifying work experience. Likewise, a new exam requirement the broker has passed. Under certain, limited circumstances, a broker may receive a waiver of an exam requirement This section includes all current principal/supervisory, general product/industry, and/or state securities law exams that

securities law exams. This individual has passed 1 principal/supervisory exam, 2 general industry/product exams, and 2 state

Principal/Supervisory Exams Exam General Securities Principal Examination General Industry/Product Exams Exam General Securities Representative Examination Limited Representative-Equity Trader Exam	Category Series 24 Category Series 7 Series 55	Date 12/10/2005 12/10/2000 11/10/2000
General Securities Representative Examination	Series 7	09/05/2000
Limited Representative-Equity Trader Exam	Series 55	11/10/2000
State Securities Law Exams		
Exam	Category	Date
Uniform Securities Agent State Law Examination	Series 63	10/13/2000
Uniform Combined State Law Examination	Series 66	11/15/2007

examinations administered by FINRA to brokers and other securities professionals can be found at Additional information about the securities industry's qualifications and continuing education requirements, as well as the http://www.finra.org/brokerqualifications/



Registration and Employment History

www.finra.org/brokercheck

Previously Registered with the Following FINRA Firms

FINRA records show this broker previously held FINRA registrations with the following firms:

Registration Dates Firm Name	Firm Name	CRD#	Branch Location	
10/2003 - 01/2008	10/2003 - 01/2008 E*TRADE SECURITIES LLC	29106	UNITED STATES	
12/2002 - 08/2003	AVALON PARTNERS, INC.	41357	NEW YORK, NY	
11/2002 - 02/2003	KUHNS BROTHERS SECURITIES CORPORATION	47331	LIME ROCK, CT	
05/2002 - 01/2003	CASIMIR CAPITAL L.P.	105061	NEW YORK, NY	
09/2000 - 02/2002	HOLD BROTHERS ON-LINE INVESTMENT SERVICES L.L.C.	36816	JERSEY CITY, NJ	
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Employment History

This section provides up to 10 years of a broker's employment history as reported by the individual broker, and includes all securities and non-securities related employment, full and part-time work, self-employment, military service, unemployment, and full-time education. Please note that this information is not updated after an individual ceases to be registered with a FINRA firm.

NYACK, NY	SUMMIT RESIDENCE CENTER	05/1998 - 08/1998
PRUMONA, NY	RAMIGOIS SUMMER CAMP	07/1999 - 08/1999
LEWISBURG, PA	BUCKNELL	08/1996 - 06/2000
JERSEY CITY, NJ	ON LINE INVESTMENT SERVICES, INC.	06/2000 - 02/2002
NEW YORK, NY	CARLIN SECURITIES	03/2002 - 05/2002
NEW YORK, NY	CASIMIR CAPITAL L.P.	05/2002 - 12/2002
NEW YORK, NY	AVALON PARTNERS	12/2002 - 08/2003
LAKEVILLE, CT	KUHNS BROTHERS SECURITIES CORPORATION	11/2002 - 09/2003
KING OF PRUSSIA, PA	E*TRADE CAPITAL MANAGEMENT LLC	09/2006 - 01/2007
KING OF PRUSSIA, PA	E*TRADE SECURITIES LLC	10/2003 - 01/2008
BLUE BELL, PA	BANC OF AMERICA INVESTMENT SERVICES, INC.	01/2008 - Present
BLUE BELL, PA	BANC OF AMERICA INSURANCE SERVICES, INC.	01/2008 - Present
Employer Location	Employer Name	Employment Dates



Registration and Employment History

Affiliations

This section includes information, if any, as provided by the broker regarding other business activities the broker is currently engaged in either as a proprietor, partner, officer, director, employee, trustee, agent or otherwise. This section does not include non-investment related activity that is exclusively charitable, civic, religious or fraternal and is recognized as tax exempt.

No information reported.



User Guidance

About this BrokerCheck Report

reports is collected through the securities industry's registration and licensing process determine whether to conduct, or continue to conduct, business with these firms and brokers. The information contained within these BrokerCheck reports are part of a FINRA initiative to disclose information about FINRA-registered firms and brokers to help investors

Who provides the information in BrokerCheck?

industry registration and licensing forms brokerage firms and brokers are required to complete. Information made available through FINRA BrokerCheck is derived from the Central Registration Depository (CRD®) as reported on the

The forms used by brokerage firms, Forms BD and BDW, are established by the Securities and Exchange Commission (SEC) and adopted by all state securities regulators and self-regulatory organizations (SROs). FINRA and the North American Securities Administrators U6, which is used primarily to report certain history about brokerage firms and brokers. These forms are approved by the SEC Association (NASAA) establish the Forms U4 and U5, the forms that collect broker information. Regulators provide information via Form

How current is the information contained in BrokerCheck?

days after the broker/brokerage firm learns of an event). The report data is updated when a firm, broker, or regulator submits new or revised information to CRD. Generally, updated information is available on BrokerCheck Monday through Friday. Brokerage firms and brokers are required to keep this information accurate and up-to-date (updates typically are required not later than 30

What information is NOT disclosed through BrokerCheck?

customer complaint information that is not required to be reported may be disclosed provided certain criteria are met. reported as pending that subsequently have been satisfied and bankruptcy proceedings filed more than 10 years ago. Conversely, certain BrokerCheck. Examples of events that are not required to be reported or are no longer reportable include: judgments and liens originally Information that has not been reported to the CRD system, or that is not required to be reported, is not disclosed through FINRA

description information. On a case-by-case basis, FINRA reserves the right to exclude information that contains confidential customer aisclosed through BrokerCheck not outweighed by investor protection concerns. NASD Interpretive Material 8310-2 describes in detail what information is and is not information, offensive and potentially defamatory language or information that raises significant identity theft or privacy concerns that are Additional information not disclosed through BrokerCheck includes Social Security Numbers, residential history information, and physical

Under FINRA's current public disclosure policy, in certain limited circumstances, most often pursuant to a court order, information is expunged from the CRD system. Further information about expungement from the CRD system is available in NASD Notices to Members 99-09, 99-54, 01-65, and 04-16 at www.finra.org.

FINRA BrokerCheck Hotline at (800) 289-9999. The hotline is open Monday through Friday from 8 a.m. to 8 p.m., Eastern Time (ET). For further information regarding FINRA's BrokerCheck program, please visit FINRA's Web Site at www.finra.org/brokercheck or call the

Case 1:08-cv-02993-RJH

For more information about the following, select the associated link:

- About BrokerCheck Reports: http://www.finra.org/brokercheck_reports
- Glossary: http://www.finra.org/brokercheck_glossary
- Questions Frequently Asked about BrokerCheck Reports: http://www.finra.org/brokercheck_tag
- Terms and Conditions: http://brokercheck.finra.org/terms.aspx

EXHIBIT 2

Section Title
Report Summary

Page(s)

Broker Qualifications

About this BrokerCheck Report

Registration and Employment History

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BrokerCheck Report SEAN JOSEPH GAFFEY CRD# 4284044

Report #59415-67744 generated on Tuesday, March 18, 2008



Dear Investor:

contained within this report has been provided by a FINRA has generated the following BrokerCheck Depository (CRD®). information reported to the Central Registration FINRA brokerage firm(s) and securities regulators as report for SEAN J. GAFFEY. The information part of the securities industry's registration and icensing process and represents the most current

and convictions, misdemeanor charges and with creditors, judgments, and liens. convictions relating to securities violations, and practice violations against brokers, all felony charges customer disputes that contain allegations of sales continue to conduct, business with a FINRA member benefit and protection of the investor. FINRA believes FINRA regulates the securities markets for the ultimate you. Examples of information FINRA provides include: policy to make certain types of information available to the general public should have access to information inancial events such as bankruptcies, compromises regulatory actions, investment-related civil suits, that will help them determine whether to conduct, or To that end, FINRA has adopted a public disclosure

it may include items that involve pending actions or settlement with no admission or finding of wrongdoing withdrawn or dismissed, or resolved in favor of the resolved or proven. Such items may, in the end, be allegations that may be contested and have not been When evaluating this report, please keep in mind that individual broker, or concluded through a negotiated

Document 5-3

local consumer and investment groups, or friends and as much as possible about the individual broker or firm you should consult. FINRA recommends that you learn family members who already have established The information in this report is not the only resource investment business relationships. from other sources, such as professional references

> securities regulator. Refer to www.nasaa.org for a consider requesting information from your state and may provide additional information on brokers complete list of state securities regulators. licensed by the state. Therefore, you should also State disclosure programs are governed by state law regulations and FINRA rules approved by the SEC. Securities and Exchange Commission (SEC) FINRA BrokerCheck is governed by federal law,

Thank you for using FINRA BrokerCheck



Conditions. A complete list of **BrokerCheck Terms and** that you accept the FINRA Using this site/information means ound at Terms and Conditions can be

brokercheck.finra.org



www.finra.org/brokercheck. It refer to the User Guidance or the contents of this report, please as well as additional resources. provides a glossary of terms and or more information about ist of frequently asked questions For additional information about INRA, vísit www.finra.org,



CRD# 4284044 **SEAN J. GAFFEY**

www.finra.org/brokercheck

following FINRA Firms: Currently employed by and registered with the

FORT LEE, NJ 07024 **400 KELBY STREET** SERVICES, INC. 19TH FLOOR

BANC OF AMERICA INVESTMENT

Registered with this firm since: 02/2008

CRD# 16361

Report Summary for this Broker

User Guidance

broker, a FINRA-registered firm(s), and/or securities regulator(s) have provided the information contained in this report was last updated by either the broker, a previous employing brokerage firm, or a securities regulator on report as part of the securities industry's registration and licensing process. The information contained in this The report summary provides an overview of the broker's professional background and conduct. The individual

Broker Qualifications

This broker is registered with:

- 1 Self-Regulatory Organization
- 29 U.S. states and territories

any regulator? No Is this broker currently suspended or inactive with

This broker has passed:

- 1 Principal/Supervisory Exam
- 2 General Industry/Product Exams
- 1 State Securities Law Exam

Registration and Employment History

following FINRA firms: This broker was previously registered with the

CRD# 29106 E*TRADE SECURITIES LLC

WALL STREET ACCESS

11/2004 - 03/2008

CRD# 10012

03/2004 - 10/2004 NEW YORK, NY

CRD# 8174 **UBS FINANCIAL SERVICES INC**

WEEHAWKEN, N. 10/2002 - 03/2003

Registration and Employment History section of this details as reported by the broker, refer to the For additional registration and employment history

Disciplinary, and Regulatory Events **Disclosure of Customer Disputes,**

of the securities industry registration and licensing cnarges and/or convictions, as well as financial by regulators, customer disputes, certain criminal process. Examples of such disclosure events include events reported by or about this broker to CRD as part disclosures, such as bankruptcies and unpaid formal investigations and disciplinary actions initiated This section includes details regarding disclosure udgments or liens.

Are there events disclosed about this broker? No

User Guidance

Broker Qualifications

Registrations

her employer.

This section provides the SROs, states and U.S. territories the broker is currently registered and licensed with, the category of each registration, and the date on which the registration status became effective. This section also provides information on the physical location of each branch that the broker is associated with, for each listed employment. This individual is currently registered with 1 SRO and is licensed in 29 U.S. states and territories through his or

Firm Name: **Employment 1 of 1**

BANC OF AMERICA INVESTMENT SERVICES, INC

Main Office Address: 100 FEDERAL ST HEADQUARTERS

BOSTON, MA 02110

Firm CRD#:
16361

SRO		Category	οīγ			Status	Date
FINRA		Genera	General Securities Representative	epresentative		APPROVED 02/22/2008	02/22/2008
FINRA		Registe	Registered Options Principal	rincipal		APPROVED	VED 02/22/2008
U.S. State/ Territory	Category	Status	Date	U.S. State/ Territory	Category	Status	Date
Alabama	Agent	APPROVED	03/13/2008	Minnesota	Agent	APPROVED 02/22/2008	02/22/2008
California	Agent	APPROVED	02/22/2008	Missouri	Agent	APPROVED 02/22/2008	02/22/2008
Colorado	Agent	APPROVED	02/22/2008	Montana	Agent	APPROVED	02/22/2008
Connecticut	Agent	APPROVED	02/22/2008	Nevada	Agent	APPROVED 03/13/2008	03/13/2008
District of	Agent	APPROVED	02/22/2008	New Jersey	Agent	APPROVED	02/22/2008
Colditiola	> 1			New York	Agent	APPROVED	02/22/2008
	\ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \		02/22/2000	North Carolina	Agent	APPROVED	02/22/2008
	Agent		00/10/2008	Ohio	Agent	APPROVED 02/22/2008	02/22/2008
Kontuck:	\ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \			Oregon	Agent	APPROVED	02/22/2008
Religions	Agent Agent	\ D D D \ \ \ D D D \ \ \ \ D D D \	00/02/2000	Pennsylvania	Agent	APPROVED 03/13/2008	03/13/2008
Mandania	> 0 0 1 1	V 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0	00/00/00/00	South Carolina	Agent	APPROVED 03/13/2008	03/13/2008
Manaharia	Agent	ביי ליי ליי ליי ליי ליי ליי ליי ליי ליי	02/22/2000	Tennessee	Agent	APPROVED 02/22/2008	02/22/2008
Massachuseus	Agent	ATTXCVIII	02/22/2000	Texas	Agent	APPROVED	/ED 02/22/2008
Michigan	Agent	APPROVED	02/22/2008		Ö		!

Broker Qualifications

Employment 1 of 1, continued	t 1 of 1, cor	ntinued	
U.S. State/ Territory	Category	Status	Date
Virginia	Agent	APPROVED	02/22/2008
Washington	Agent	APPROVED	02/22/2008
Wisconsin	Agent	APPROVED	02/22/2008

Branch Office Locations

BANC OF AMERICA INVESTMENT SERVICES, INC. 400 KELBY STREET 19TH FLOOR FORT LEE, NJ 07024



Broker Qualifications

may be grandfathered based on a broker's specific qualifying work experience. Information regarding instances of exam based on a combination of previous exams passed and qualifying work experience. Likewise, a new exam requirement the broker has passed. Under certain, limited circumstances, a broker may receive a waiver of an exam requirement This section includes all current principal/supervisory, general product/industry, and/or state securities law exams that Industry Exams this Broker has Passed

securities law exam. This individual has passed 1 principal/supervisory exam, 2 general industry/product exams, and 1 state waivers or the grandfathering of an exam requirement are not included as part of the BrokerCheck report.

Principal/Supervisory Exams

Registered Options Principal Examination	Exam
Series 4	Category
06/18/2005	Date

General Industry/Product Exams

Exam	Category	Date
National Commodity Futures Examination	Series 3	05/19/2005
General Securities Representative Examination	Series 7	01/20/2001
State Securities Law Exams		Halli de de la composição
Exam	Category	Date
Uniform Combined State Law Examination	Series 66	04/02/2001

examinations administered by FINRA to brokers and other securities professionals can be found at Additional information about the securities industry's qualifications and continuing education requirements, as well as the http://www.finra.org/brokerqualifications/



Registration and Employment History

www.finra.org/brokercheck

Previously Registered with the Following FINRA Firms

FINRA records show this broker previously held FINRA registrations with the following firms:

01/2001 - 09/2002 CIBC WORLD MARKETS CORP. 630 NEW YORK, NY	10/2002 - 03/2003 UBS FINANCIAL SERVICES INC. 8174 WEEHAWKEN, NJ	03/2004 - 10/2004 WALL STREET ACCESS 10012 NEW YORK, NY	11/2004 - 03/2008 E*TRADE SECURITIES LLC 29106 UNITED STATES	Registration Dates Firm Name CRD# Branch Location
ORK, NY	AWKEN, N	ORK, NY	DSTATES	າ Locatior

Employment History

securities and non-securities related employment, full and part-time work, self-employment, military service, unemployment, and full-time education. Please note that this information is not updated after an individual ceases to be registered with a FINRA firm. This section provides up to 10 years of a broker's employment history as reported by the individual broker, and includes all

PISCATAWAY, NJ	INTERNATIONAL DISCOUNT TELECOM	03/1999 - 08/1999
SCRANTON, PA	UNIVERSITY OF SCRANTON	09/1995 - 06/2000
NEW YORK, NY	CIBC WORLD MARKETS CORP	09/2000 - 09/2002
NEW YORK, NY	UBS PAINEWEBBER INC	09/2002 - 02/2003
UPPER SADDELE RIVER, NJ	PDI	05/2003 - 12/2003
NEW YORK, NY	WALL STREET ACCESS	03/2004 - 10/2004
NEW YORK, NY	E*TRADE SECURITIES LLC	10/2004 - 02/2008
FORT LEE, NJ	BANC OF AMERICA INVESTMENT SERVICES, INC.	02/2008 - Present
FORT LEE, NJ	BANC OF AMERICA INSURANCE SERVICES, INC.	02/2008 - Present
Employer Location	Employer Name	Employment Dates Employer Name

Affiliations

does not include non-investment related activity that is exclusively charitable, civic, religious or fraternal and is currently engaged in either as a proprietor, partner, officer, director, employee, trustee, agent or otherwise. This section This section includes information, if any, as provided by the broker regarding other business activities the broker is recognized as tax exempt.

No information reported



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disclosed through BrokerCheck not outweighed by investor protection concerns. NASD Interpretive Material 8310-2 describes in detail what information is and is not information, offensive and potentially defamatory language or information that raises significant identity theft or privacy concerns that are description information. On a case-by-case basis, FINRA reserves the right to exclude information that contains confidential customer Additional information not disclosed through BrokerCheck includes Social Security Numbers, residential history information, and physical

99-09, 99-54, 01-65, and 04-16 at www.finra.org. expunged from the CRD system. Further information about expungement from the CRD system is available in NASD Notices to Members Under FINRA's current public disclosure policy, in certain limited circumstances, most often pursuant to a court order, information is

FINRA BrokerCheck Hotline at (800) 289-9999. The hotline is open Monday through Friday from 8 a.m. to 8 p.m., Eastern Time (ET). For further information regarding FINRA's BrokerCheck program, please visit FINRA's Web Site at www.finra.org/brokercheck or call the

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For more information about the following, select the associated link:

- About BrokerCheck Reports: http://www.finra.org/brokercheck_reports
- Glossary: http://www.finra.org/brokercheck_glossary
- Questions Frequently Asked about BrokerCheck Reports: http://www.finra.org/brokercheck_fag
- Terms and Conditions: http://brokercheck.finra.org/terms.aspx



EXHIBIT 3



Code of **Professional Conduct**

E*TRADE FINANCIAL Corporate Policies and Procedures

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Introduction

Purpose of the Code

Our employees, customers, potential customers, and shareholders expect the highest degree of ethics, honesty and fairness because they place their financial assets in our care.

The purpose of the Code of Professional Conduct (the "Code") is to protect and enhance the reputation and franchise of E*TRADE FINANCIAL1 by setting standards for our behavior as its employees, officers, directors and agents.

Although the financial services industry is heavily regulated, simple adherence to the "letter of the law" is not what our employees, customers, potential customers, and shareholders expect. They expect the highest degree of ethics, honesty and fairness in all of our interactions because they place their financial assets in our care.

It is the responsibility of every employee to comply with all applicable laws and regulations and all provisions of the Code, as well as E*TRADE FINANCIAL's other corporate policies and procedures, and to exercise sound judgment. Such compliance is critical to our continued success. All Company supervisors are responsible and accountable for monitoring the compliance of employees they manage.

Remember that E*TRADE FINANCIAL has a number of resources available for you to help you work through situations where you may have questions. We have experienced professionals in our Legal department, our Compliance

¹ Throughout the Code, the term "E*TRADE FINANCIAL" or the "Company" refers to E*TRADE FINANCIAL Corporation and its subsidiaries and affiliated entities, including, but not limited to, E*TRADE Clearing LLC, E*TRADE Securities LLC, and all other broker-dealer subsidiaries, E*TRADE Funds, E*TRADE Bank and all of its subsidiaries and all other non-U.S. entities, unless specified otherwise.

department, our Corporate Security and Fraud Management department, our Internal Audit department and our Human Resources department who all are here to help you, in addition to your supervisors. You can find contact and other helpful information about these groups on Channel E*.

Implementing the Code

Exercising Sound Business Judgment

E*TRADE FINANCIAL relies on you to exercise your best judgment and highest ethics in performing your job. When the Code articulates a specific standard of conduct, you must conform to it. However, no code of professional conduct can anticipate every legal or ethical issue that might arise in the course of our business.

In areas not specifically addressed in the Code, you must conduct yourself in the spirit of the Code, with the highest degree of ethics and with the aim of protecting E*TRADE FINANCIAL and its reputation. You should consider both whether a proposed course of action complies with all applicable laws and regulations and whether it could embarrass or otherwise harm you or E*TRADE FINANCIAL.

You must therefore avoid not only actual misconduct but also the appearance of impropriety. Assume that any action you take will ultimately be publicized and consider how E*TRADE FINANCIAL (and you) would be perceived. When in doubt, seek guidance from your supervisor or the appropriate E*TRADE FINANCIAL department.

Reporting Violations

You are E*TRADE FINANCIAL's first line of defense against civil or criminal liability and unethical business practices.

If you know of, observe, suspect or otherwise become aware of a violation of applicable laws or regulations or of the Code or E*TRADE FINANCIAL's other policies and procedures, you must report that information immediately to your direct supervisor or another appropriate representative of E*TRADE FINANCIAL's senior management or, as discussed below, to ListenUp, the third party service the Company has engaged to receive anonymous reports. If appropriate or necessary, you must also report that information to Security, a more senior manager or to Human Resources, Legal or Compliance. If you believe that the person to whom you have so reported has not taken appropriate action, you must contact Human Resources, Legal, Compliance or Internal Audit directly.

If you believe that you may have violated the law or E*TRADE FINANCIAL's standards, you must report your behavior to Legal, Internal Audit, Corporate Security and Fraud Management or Compliance immediately. The fact that you reported the violation, together with the degree of cooperation you display and whether the violation is intentional or unintentional, will be given consideration in an investigation and any resulting disciplinary action.

Upon learning of probable or actual misconduct, supervisors must notify Human Resources, Legal, Compliance, or Security, as appropriate, and, in consultation with the appropriate professional, take prompt, appropriate remedial action. Supervisors who fail to take appropriate action may be held responsible.

The Company has engaged an outside firm with a service known as ListenUp (which you can access at www.listenupreports.com) to provide a confidential method for you to anonymously report any suspected violations of law or otherwise inappropriate conduct, including, but not limited to, concerns related to corporate governance, financial reporting (including Sarbanes-Oxley Act compliance), sexual or other harassment, discrimination, theft, fraud, or threats to the safety of E*TRADE FINANCIAL employees. Further information for making reports through the ListenUp service is available on Channel E*.

Unless responsible Company management learns of a problem, we cannot resolve it appropriately. Concealing improper conduct often compounds the problem and may make impossible or delay or hamper responses that could prevent or mitigate actual harm to the Company and any individuals who may be subjected to the conduct. Remember, the Company does not tolerate retaliation against any individual who makes a report in good faith.

You should contact your supervisor, Legal or Compliance with any questions about this Code, E*TRADE FINANCIAL's policies and procedures, or any legal, regulatory or ethical issues.

Investigating Violations

All reported violations of applicable laws or regulations, the Code or E*TRADE FINANCIAL's related policies and procedures will be promptly investigated and will be treated confidentially to the extent possible and practicable under the circumstances and consistent with enforcing the Code and applicable law. Please be aware that circumstances may prevent us from keeping any matter completely confidential, as certain disclosures may be required to conduct a complete investigation or comply with regulatory disclosure requirements.

Records Management

E*TRADE FINANCIAL is required by law and by industry regulation to maintain its books and records in good order and to memorialize the essential terms of its business agreements. Details of our Records Management Policy are available on Channel E*. Every employee is required to be familiar with these policies and procedures. Among other things, the policies and procedures require that you:

- review files periodically to ensure that information is current, essential and consistent with document retention policies and applicable law and regulations; and
- discard drafts, notes, notebooks, diaries, telephone logs, message slips and other documents when they are no longer useful or current and not otherwise required to be retained.

In conducting a review of your files, be careful not to discard:

- documents that must be kept for specific periods of time under applicable laws and regulations (guidance concerning which can be obtained from the Records Management Policies and Procedures and Legal and Compliance):
- documents that are the subject of a subpoena or document request; or
- documents that are potentially relevant to a lawsuit or investigation that has been or may be initiated or documents you have been instructed to retain as part of any lawsuit or investigation.

The Code of Professional Conduct and Your **Employment**

Code of Professional Conduct Is Not an Employment Contract

The policies and procedures of the Code form part of the terms and conditions of your employment. However, the Code is not a contract, express or implied, guaranteeing progressive discipline or employment for any specific duration or entitling you to bonuses or other forms of compensation. Except in certain jurisdictions outside the United States, employment at E*TRADE FINANCIAL is at will, meaning that either you or E*TRADE FINANCIAL may terminate this relationship at any time, with or without cause.

Changes to the Code of Professional Conduct

E*TRADE FINANCIAL's policies and procedures stated in this Code are subject to change at the sole discretion of E*TRADE FINANCIAL. In addition, E*TRADE FINANCIAL may implement additional policies and procedures with which you must also comply. It is your responsibility to be familiar at all times with the Code, as it may be revised or amended, and any other policies and procedures relevant to your responsibilities as an employee of the Company.

Consequences of Violating the Code of Professional Conduct

Document 5-4

Violations of the Code may subject you to disciplinary action by E*TRADE FINANCIAL including — without limitation — warnings, reprimands, temporary suspensions, probation or termination of your employment. Disciplinary actions may be taken:

- · against employees who authorize or participate directly, and in certain circumstances indirectly, in actions which are a violation of applicable laws or regulations, the Code or E*TRADE FINANCIAL's policies and procedures:
- against employees who fail to report or withhold information concerning conduct that they knew or should have known was a violation of applicable laws or regulations, the Code or E*TRADE FINANCIAL's policies and procedures or withhold information concerning a violation of which they become aware or should have been aware;
- against the violator's supervisor(s), to the extent that the circumstances of the violation reflect inadequate supervision or lack of diligence by the supervisor(s):
- against employees who attempt to retaliate, directly or indirectly, or encourage others to do so, against an employee who reports an actual or potential violation of applicable laws or regulations, the Code or E*TRADE FINANCIAL's policies and procedures:
- against employees who knowingly make a false report of a violation.

E*TRADE FINANCIAL also must report certain activities to its regulators, which could give rise to regulatory or criminal investigations. The penalties for regulatory or criminal violations may include significant fines, permanent bar from employment in the securities industry and, for criminal violations, incarceration.

Acknowledging the Code of Professional Conduct

Abiding by the standards and procedures outlined in the Code and E*TRADE FINANCIAL's policies and procedures is a condition of continued employment with E*TRADE FINANCIAL

When you have concluded your review of this revised Code, you must complete an acknowledgement form indicating that you have read the Code and that you understand and agree to abide by its requirements. New employees will also be required to acknowledge their receipt and understanding of the Code and their commitment to comply with it. Failure to complete this acknowledgement may result in termination of your employment. Regardless of whether you have completed the acknowledgment, you must comply with the terms of the Code.

Questions

If you have any questions at any time concerning the Code or E*TRADE FINANCIAL's policies and procedures, or feel the need to seek guidance with respect to a legal or ethical question, you should consult your supervisor, Human Resources, Internal Audit, Legal or Compliance.



Filed 03/25/2008

Standards of Conduct

General

Employees are responsible for reviewing and understanding the policies and procedures related to their work activities and are advised that the following summary is for general introductory purposes only.

The activities of E*TRADE FINANCIAL's employees must always be in full compliance with applicable laws and regulations and with the Code and E*TRADE FINANCIAL's related policies and procedures. If there is any doubt as to the legality of any proposed activity, seek advice from Legal or Compliance before the activity is undertaken.

This section of the Code outlines the general standards of conduct with respect to specific additional issues confronting employees, such as:

- E*TRADE FINANCIAL's nondiscrimination and anti-harassment policies;
- E*TRADE FINANCIAL's policies on handling proprietary, confidential and nonpublic (or "inside") information:
- E*TRADE FINANCIAL's policies on participation in outside business activities and private securities transactions;
- E*TRADE FINANCIAL's policies on political contributions;
- E*TRADE FINANCIAL's policies on employee stock trading.

Responsibilities under the Law

The activities of E*TRADE FINANCIAL and its employees are regulated by governmental entities (such as the Securities and Exchange Commission ("SEC") and the Office of Thrift Supervision ("OTS")) and self-regulatory organizations ("SROs") (such as the NASD, Inc.). You must comply with all applicable laws and regulations in the jurisdictions in which E*TRADE FINANCIAL does business. To this end:

- You must know and comply with the particular legal and regulatory obligations related to your position at E*TRADE FINANCIAL, including those laws and regulations applicable to the business unit(s) in which you work;
- You must observe the highest standards of professional conduct when conducting your business.

You may be held personally liable for improper or illegal acts committed during your employment. Such liability could subject you to civil or criminal penalties (fines or imprisonment), regulatory sanctions (censure, suspension or industry bar) and disciplinary action by E*TRADE FINANCIAL, up to and including termination of your employment.

The following is a general summary of certain laws and other rules that apply to E*TRADE FINANCIAL. However, this summary cannot and does not address every possible situation that could arise in the course of E*TRADE FINANCIAL's business. Ignorance of applicable laws, regulations or rules will excuse neither E*TRADE FINANCIAL nor you from potential penalties or sanctions, including internal disciplinary action. Therefore, if you are uncertain about the laws of a particular jurisdiction or you are uncertain whether certain acts or practices comply with the law, you must contact Legal or Compliance.

Securities Laws, Including Financial Reporting

Because E*TRADE FINANCIAL is licensed and regulated in a number of jurisdictions, it is subject to numerous securities laws and rules, including laws and rules regarding financial reporting, as set forth in more detail below. You must understand and obey all applicable laws. Contact Legal or Compliance for advice regarding any specific transactions or issues.

In particular, included among the many securities laws with which we must comply are rules concerning the proper reporting of financial information regarding the results of operations of E*TRADE FINANCIAL. We provide full, fair, accurate, timely and understandable disclosure in reports that we file with or submit to the SEC and other regulatory organizations and in other public communications. In all of our fillings we comply with generally accepted accounting principles. Any intentional effort to violate those principles, provide

misleading financial information, improperly report revenue recognition, create "side letters", avoid revenue recognition or expense recognition will not be tolerated. Contact the Corporate Controller, Legal or Compliance as appropriate for advice regarding any specific transactions or issues.

Exchange and Self-Regulatory Organization Rules

E*TRADE FINANCIAL is a member of many exchanges and SROs that issue and enforce rules about trading in securities, commodities and related instruments, and about other aspects of E*TRADE FINANCIAL's business. You must be familiar with and abide by the rules applicable to your business unit. Violations of exchange or SRO rules can lead to fines and penalties against you and E*TRADE FINANCIAL.

Banking Laws and Regulations

Because of the nature of E*TRADE FINANCIAL's business, including the operations of its federally charted savings banks and the geographic reach of its business, E*TRADE FINANCIAL is subject to numerous banking laws and regulations. You must be familiar with and abide by the banking related laws and regulations applicable to your business unit, if any. Violations of such rules can lead to fines and penalties against you and E*TRADE FINANCIAL. Contact Legal or Compliance for advice on specific transactions or issues.

Licensing and Registration

Many jurisdictions require licensing or registration of individuals who perform certain activities in the financial services industry. These requirements apply to many individual E*TRADE FINANCIAL employees. If you have any questions about whether your activities require you to be licensed or registered, you should consult with your supervisor or Compliance.

For those employees who are registered, any material changes to the information provided at the time of registration (such as a change in name or residential address) must be provided to Compliance immediately.

Company Books and Records

E*TRADE FINANCIAL books and records must be correct in all significant respects. E*TRADE FINANCIAL expects you to be candid and accurate when providing information for these books and records. Every business transaction undertaken by E*TRADE FINANCIAL must be recorded correctly and in a timely manner in E*TRADE FINANCIAL's books and records. You may not make any false or misleading entries or provide any false or misleading information.

Any payment made at your request on E*TRADE FINANCIAL's behalf must be supported by appropriate and correct documentation. In addition, corporate records must comply with regulatory requirements and Company policies.

Antitrust and Trade Regulation Laws

Many jurisdictions have enacted antitrust and trade regulation laws to ensure fair competition. Generally, these laws prohibit monopolization, price-fixing, overlapping boards of directors between certain types of companies, exclusive dealing and "tying" arrangements, price or service discrimination that diminishes competition, deceptive acts and unfair competition. Violations of these laws may result in civil or criminal liability and disciplinary action by E*TRADE FINANCIAL, up to and including termination of employment.

E*TRADE FINANCIAL operates in complex business environments and it is impossible to anticipate each circumstance in which antitrust and trade regulation issues may arise. Some forms of joint activities in the securities industry (underwriting syndicates, for example) are legally permissible, but others are not. You may confront antitrust and trade regulation issues in joint ventures, strategic investments, revenue sharing agreements, trade industry associations, and formal or informal meetings or conversations with competitors, suppliers and other third parties.

Under no circumstances should you:

- discuss price, product or service arrangements, or division of market share with competitors, unless that information has previously been made publicly available or such disclosure has been authorized by Legal and Compliance;
- divulge the identity of E*TRADE FINANCIAL's actual or potential customers or any of the terms upon which E*TRADE FINANCIAL may work with those customers, unless authorized by Legal and Compliance;
- enter into any agreement obligating any customer either to work exclusively with E*TRADE FINANCIAL or not to purchase securities or services from a competitor, unless Legal and Compliance has reviewed and approved the agreement;
- enter into any agreement with a third party that involves pricing restrictions, unless Legal and Compliance has reviewed and approved the agreement; or
- illegally or improperly acquire market or competitive information.

You should contact Legal if you have questions about any antitrust or trade regulation issue.

Foreign Corrupt Practices Act and Anti-Bribery Statutes

If your job responsibilities include transactions with non-U.S. governments or government-controlled entities, public international organizations or non-U.S. political parties (including officials, employees or representatives of any of these entities), you should assume that the U.S. Foreign Corrupt Practices Act ("FCPA") applies, regardless of where you are located.

The FCPA prohibits any payment or gift, or any offer or authorization of a payment or gift, to these entities or individuals in order to secure any improper business advantage, such as inducing the entity or individual to act favorably on, or influence others to act favorably on, business proposals or regulatory decisions. Such payments and gifts are forbidden even if they are customary in a particular country.

The FCPA also prohibits payments to agents or intermediaries who would use the funds for prohibited purposes (and generally prohibit doing indirectly what may not be done directly). Therefore, E*TRADE FINANCIAL must select only reputable agents and must exercise due care in determining the amount of any compensation it will pay to such agents. You must not hire an agent before you have obtained approval from Legal.

Many countries in the world are now adopting statutes similar to the FCPA. In addition, virtually every country has a domestic anti-bribery statute, and many government agencies have their own rules governing the acceptance of gifts, travel or entertainment. Be aware that in some cases these statutes and rules may prohibit conduct that the FCPA would permit. Check with Legal and Compliance if you have any questions as to the permissibility of particular conduct under the FCPA or under the statutes or rules of any country in which vou are doing business.

Economic Sanctions

The U.S. Office of Foreign Assets Control ("OFAC") administers the economic sanctions imposed by the United States against certain groups and countries, in order to further U.S. foreign policy and national security objectives. These trade restrictions vary depending on the nature of the particular sanction, and may involve an absolute prohibition from doing business with a particular country, a partial ban that covers certain types of transactions, or transactions with specific individuals or groups. Countries that have been the subject of such sanctions include Belarus, Cote d'Ivoire, Cuba, North Korea, Iraq, Iran, Sudan, Syria, Liberia, Burma (Myanmar) and Zimbabwe. Persons or groups that have been the subject of such sanctions (also known as specifically designated nationals ("SDNs")) include terrorists, narcotics traffickers and certain political figures. OFAC publishes and regularly updates the lists of all countries, groups and SDNs that are subject to trade sanctions. You may access the current lists at http://www.treas.gov/ofac.

Under no circumstances may you open an account or undertake a transaction with a person, group or country on any OFAC list. If any person or entity on the OFAC list attempts to open an account or conduct a transaction with E*TRADE FINANCIAL, you must report this activity to Compliance, Security or Risk Management. No business with any person or entity on the OFAC list will be permitted. Countries, groups and persons subject to sanctions are periodically added to or removed from the OFAC list. Therefore, you must keep current as to which countries, groups and persons are subject to OFAC sanctions.

If you are located outside the U.S., different sanctions may apply. You should consult your local Legal, Compliance or Risk Management about potential sanctions.

Anti-Boycott Laws

U.S. law prohibits E*TRADE FINANCIAL from complying with or supporting a foreign country's boycott of a country "friendly" to the United States. Accordingly, employees who are U.S. residents or nationals, wherever located, may not refuse to do business with anyone for boycott-related reasons, furnish information requested for boycott reasons, or otherwise support a foreign boycott not sanctioned by the U.S.

If you are located outside the U.S., there may be local law that is the reverse of or different from the U.S. anti-boycott law. You should consult local Legal and Compliance with any questions about the existence or effect of such laws.

Currently, the best-known boycott with which U.S. law prohibits compliance is the Arab boycott of Israel and its nationals. With respect to this boycott, E*TRADE FINANCIAL is required to report annually all operations in or related to the boycotting countries - which may include Bahrain, Egypt, Jordan, Oman, Iraq, Qatar, Saudi Arabia, Kuwait, Syria, Lebanon, United Arab Emirates, Libya, Republic of Yemen and others - to the U.S. Government. E*TRADE FINANCIAL must also report promptly any request to support or furnish information about this boycott, including any oral request received during a transaction.

Requests to support or furnish information about a boycott often arise during negotiations of contract terms. If you receive or learn of such a request, report it immediately to Legal.

Anti-Money Laundering Laws

U.S. anti-money laundering laws aim to prevent, detect and deter money laundering and terrorist financing. The term "money laundering" covers any process designed to conceal the true origin and ownership of the proceeds of criminal activities that changes the identity of illegally obtained money so that it appears to have originated from a legitimate source. The term "terrorist financing" covers activities that are ideological rather than profit-based, which can include

providing, collecting or using funds – whether legitimately or illegally obtained – to carry out a terrorist act. The Bank Secrecy Act (as amended by the USA PATRIOT Act) and other federal laws require E*TRADE FINANCIAL to implement comprehensive anti-money laundering compliance programs, including procedures to verify our customers' identities, maintain records and to report any attempts to launder funds or conduct other suspicious or unusual activities.

Money laundering and terrorist financing may occur not only in connection with new clients but also with new or existing accounts of established clients. Thus, you must be mindful of the problem of money laundering and terrorist financing issues and vigilantly watch for signs of such activity. You must make every effort to know E*TRADE FINANCIAL's customers and to be aware at all times of what might constitute suspicious or unusual transactions or behavior.

If you have grounds for suspecting suspicious or unusual activity relating to an E*TRADE FINANCIAL customer or employee, you should immediately inform Compliance, Corporate Security & Fraud Management, Legal or Risk Management. Any act by or on behalf of E*TRADE FINANCIAL or its employees that assists in money laundering could be a serious criminal offense. Failure to report suspicions of money laundering to the relevant authorities also may constitute an offense and could involve significant penalties for the Company, as well as the individuals involved. Finally, you are prohibited from alerting a customer or other E*TRADE FINANCIAL employees (outside of those responsible for managing the situation) of your suspicion, as this may also be an offense in certain jurisdictions.

If you have any questions concerning these issues, contact Compliance, Corporate Security and Fraud Management, Legal or Risk Management.

Intellectual Property Protection

Most jurisdictions have some form of legal protection for intellectual property, including copyrights, patents, trademarks and trade secrets.

Copyright laws govern the display and reproduction of copyrighted material, which includes most books, magazines, newspapers, websites, research reports and software. You cannot display or reproduce copyrighted material without the permission of the copyright owner. Because copyright laws are complex, you should contact Legal with questions about displaying or reproducing material subject to copyright protection.

Patent laws govern the right to make, use and sell a patented invention. Certain software applications and business methods may be subject to patent protection. If you develop a software application, business method or invention during the course of your employment with E*TRADE FINANCIAL, you should document the development and consult with your direct supervisor and Legal concerning its

patentability. Similarly, before introducing a software application, business method or invention that is similar to that of another company, particularly in the financial services industry, you should consult with Legal about possible infringement risks.

Trademark laws govern the use of product or brand names, service marks, and trade names that the public associates with a particular product or service. You must obtain prior approval of all uses of E*TRADE FINANCIAL's trademarks, service marks and trade names from Legal or Compliance-Advertising Review as appropriate. In addition, before adopting any new names for product or service offerings, you must have the approval of Legal.

Trade secret protection governs the disclosure and use of information that the owner has endeavored to hold secret, usually because the information provides the owner with a competitive advantage. It is not necessary that the information be subject to copyright, patent or trademark protection in order to constitute a trade secret.

E*TRADE FINANCIAL's policies govern situations in which you develop, create or receive any materials subject to intellectual property protection in the course of your employment by E*TRADE FINANCIAL. If you have any questions concerning these policies, review E*TRADE FINANCIAL's policy on "Handling Proprietary and Confidential Information," outlined in this Code, and consult with Legal.

Privacy Laws and Regulations

E*TRADE FINANCIAL employees are required as a term of their employment to agree to maintain the confidentiality of sensitive nonpublic customer and employee information to which they may be exposed from time-to-time during the course of their employment. Prior to disclosing any such information to business partners and/or any third party, you should review internal policies and procedures, such as E*TRADE FINANCIAL's privacy policy and any opt-out provisions which may be applicable. Should there still be questions about the release of the information, you should obtain the advice of the Legal and Compliance departments. In addition to privacy policies, laws and regulations require that E*TRADE FINANCIAL maintain the confidentiality of customer information. Under certain circumstances, laws may prohibit sharing of customer data even among E*TRADE FINANCIAL entities. For questions regarding privacy, contact Legal, Compliance or the Company's Privacy Officer.

Reporting Inappropriate Activity

If at any time you become aware of activity of any employee (including yourself) which you believe is or may be a violation of any law, rule or regulation, or that is a breach of our customers' faith in our integrity, you have an obligation to report

that activity to your supervisor, Human Resources, Legal or Compliance immediately.

Any reported incident of inappropriate activity may be investigated. Such investigation may include individual interviews with the parties involved and, when necessary, with individuals who may have observed the alleged conduct or may have other relevant knowledge. The investigation may also involve the review of any systems utilized in the alleged transaction and any relevant electronic or written information.

Retaliation is Prohibited.

E*TRADE FINANCIAL prohibits retaliation against any individual who, in good faith, reports any inappropriate activity or any individual who participates in, or otherwise supports an investigation of such reports. Anyone who retaliates against an individual under such circumstances will be subject to disciplinary actions up to and including termination of employment.

Dealing with Third Parties

Authority to Act on Behalf of E*TRADE FINANCIAL

Do not commit E*TRADE FINANCIAL to any obligations unless you have the authority to do so. Except with respect to trading activities performed by registered brokers and customer service representatives on behalf of our brokerage customers in the regular course of business, only certain individuals (typically Members of the entity's Board of Directors, and its Officers, Managing Directors, EVPs, SVPs or VPs) may enter into commitments on behalf of E*TRADE FINANCIAL, which includes signing contracts on behalf of any E*TRADE FINANCIAL entity. All contracts must be reviewed and approved by Procurement and/or Legal (depending on the subject of the agreement) before they are signed. Certain contracts also require approval of the Technology Infrastructure Committee, Procurement, Vendor Management or Finance. In addition, various business units and departments have special approval requirements for commitments of a certain size. You should consult with your supervisor to learn of any such policies. The Company's Contract Signing Authority Policy is posted on Channel E* and you should contact Legal with any additional questions regarding authority to bind E*TRADE FINANCIAL to obligations with third parties.

Conflicts of Interest

Separate and apart from applicable laws and regulations, you have a primary business and ethical responsibility to E*TRADE FINANCIAL to avoid any activity or relationship that may interfere, or have the appearance of interfering, with the performance of your duties in a loyal, efficient manner to the best of your ability.

Such activities and relationships, called "conflicts of interest," include any interest, relationship or activity that is incompatible or has the appearance of being incompatible with the best interests of E*TRADE FINANCIAL, or which potentially affects or has the appearance of affecting your objectivity as an employee.

Depending on your particular responsibilities, potential conflict of interest situations may include, but are not limited to:

- using E*TRADE FINANCIAL's premises, assets, information or influence for personal gain;
- causing E*TRADE FINANCIAL to purchase services or products from family members or businesses in which you or your family have or may have an interest, unless approved to do so after disclosing the pertinent facts to your direct supervisor, Legal and Compliance;
- serving as a director, officer, employee, partner, consultant or agent of an enterprise that is a present or potential supplier, or a competitor of E*TRADE FINANCIAL; or that engages or may engage in any other business with E*TRADE FINANCIAL;
- owning a material amount of stock, being a creditor or having any other financial interest in an enterprise described above;
- having any other significant direct or indirect personal interest in a transaction involving E*TRADE FINANCIAL;
- obtaining or using for personal benefit confidential information regarding an enterprise described above, or providing confidential information regarding E*TRADE FINANCIAL or its business to such an enterprise;
- appropriating for personal benefit a business opportunity that E*TRADE FINANCIAL might reasonably have an interest in pursuing, without first making the opportunity available to E*TRADE FINANCIAL; or
- engaging in outside activities that detract from or interfere with the full and timely performance by an employee of all of his or her duties for the Company.

Your involvement in certain outside activities may require the prior approval of E*TRADE FINANCIAL. If you have any questions, consult E*TRADE FINANCIAL's policies on "Outside Business Activities" and contact Compliance.

Gifts to and from Customers, Suppliers and Others

You and your family members may not accept gifts or special favors (other than of nominal value) from any person or organization with which E*TRADE FINANCIAL has a current or potential business relationship. In addition, Company policy, applicable laws, regulations or SRO rules may prohibit you from giving gifts in excess of specified monetary levels (or of any value) to third parties, including persons employed with a stock exchange, regulatory authority, financial institution, broker, dealer, or the news or financial information media. Contact Compliance about specific restrictions or the meaning of "nominal value."

When permitted by law and consistent with accepted business practices and ethical standards, you may give gifts of nominal value to customers, suppliers and persons who have referred business to E*TRADE FINANCIAL. No gifts should be given if public disclosure of the circumstances would embarrass you or E*TRADE FINANCIAL. Special restrictions often apply to gifts to and entertainment of government employees, even of nominal value.

Customer entertainment expenses are generally not considered gifts if employees are present, the provision of the entertainment is not routine, and the expense is not excessive. Contact your supervisor or Compliance for further details.

You must provide complete and accurate expense reports for all gifts and entertainment expenses paid for by E*TRADE FINANCIAL.

Selecting Suppliers

Evaluate competing suppliers by their long-term financial stability and the price and quality of the product or service. Personal relationships should not be (or be perceived to be) a factor in the decision to use a particular supplier. However, you may consider E*TRADE FINANCIAL's interest in developing mutually productive business relationships.

Standards of Conduct Demanded of Third Parties

The Company's vendors, suppliers, contractors and agents should be made aware that E*TRADE FINANCIAL expects all individuals and companies with whom it does business to operate with the same standards of ethics and compliance with the law that we demand of ourselves, and that the Company will not tolerate the failure to follow those standards. While no single process for such notification is appropriate in all circumstances, Company employees should make it clear in their dealings with third parties that we expect full compliance with ethics and the law.

Requests for Legal, Financial or Tax Advice

Customers may request legal, financial or tax advice about securities or other issues because they assume that you are knowledgeable about those areas. Company policy generally prohibits customer service representatives, relationship managers, and brokers from giving legal, financial or tax advice to a customer unless you are specifically approved and licensed to give investment advice. Customers should be advised to consult their own counsel for legal advice and to consult their own tax advisors for tax guidance.

Advertising

Only Marketing is authorized to arrange for advertising on E*TRADE FINANCIAL's behalf. All advertising must be coordinated, approved and placed by Marketing.

Charitable Contributions

E*TRADE FINANCIAL coordinates all of its charitable contribution programs including sponsorship or participation in charity events through local Site Leadership committees with oversight by the CEO, President and Chief Administrative Officer and in conjunction with Board guidelines and/or approvals.

Political Action Committee

E*TRADE FINANCIAL supports a Political Action Committee (the "E*TRADE PAC") as authorized by, and in accordance with, federal law. E*TRADE PAC funds are used to make contributions to candidates for federal office. Participation or membership in the E*TRADE PAC is completely voluntary. E*TRADE FINANCIAL does not require any of its employees to participate in the E*TRADE PAC and no employee should ever feel obligated in any way to participate. Participation in the E*TRADE PAC will not help or hinder the employee in any way, and E*TRADE FINANCIAL will not tolerate any reprisal, including physical force, job discrimination or any threat of employment retaliation or financial disadvantage to any employee who chooses not to participate. Any employee who feels that anyone has placed any undue pressure on them to participate in the E*TRADE PAC should immediately report the situation to a Human Resources representative, Legal or the Company's General Auditor.

Communications with the Media and other Third Parties

E*TRADE FINANCIAL values its relationships with the press and maintains routine, ongoing contact with key publications and broadcast outlets around the world.

Because our corporate communications strategy is coordinated across the Company's various business lines, and because our corporate messaging must be closely managed to ensure that it is concise and consistent, only trained and approved spokespersons, working in coordination with Corporate Communications, are authorized to represent the Company to the Media. Refer all unsolicited press inquiries to Corporate Communications. Do not initiate contact with the press without consulting Corporate Communications. This includes "letters to the editor" or comments to journalists about specific matters that relate to E*TRADE FINANCIAL's businesses and those that identify you as an employee of E*TRADE FINANCIAL. With respect to press inquiries about legal or regulatory matters or customer complaints, you should follow the procedures in the Code entitled "Your Duties Regarding Litigation, Investigations, Inquiries and Complaints".

Corporate Communications must authorize participation in personal profiles or stories about "lifestyle" in which E*TRADE FINANCIAL is referenced. If you wish to appear in articles regarding your activities outside E*TRADE FINANCIAL (philanthropic activities or hobbies, for example), you may do so. However, do not identify yourself as an employee of E*TRADE FINANCIAL or use the name or facilities of E*TRADE FINANCIAL in any way without approval from Corporate Communications.

All press releases mentioning E*TRADE FINANCIAL must be approved by Corporate Communications and Legal and Compliance before being released by E*TRADE FINANCIAL, its customers, suppliers or any other organization.

You may not endorse the products or services of suppliers or customers on behalf of E*TRADE FINANCIAL unless expressly authorized by Corporate Communications. This includes commenting in press articles (including in-house publications), broadcasts (including internet, radio and television) and participating in testimonial advertising, promotional brochures or annual reports. In addition, you may not permit third parties to use E*TRADE FINANCIAL's name for endorsements of their products or services without the approval of Corporate Communications.

Participation in Chat Rooms

You may not participate in any chat room or bulletin board discussions (whether in real-time or not in real-time) during your assigned work hours or from any E*TRADE FINANCIAL equipment at any time without specific approval from your supervisor. Whether at work or outside of work, you may not in any way purport to represent the business, activities and/or opinions of E*TRADE FINANCIAL.

Blogging

E*TRADE FINANCIAL understands that some employees may wish to create and maintain personal Web logs or "blogs." While the Company respects employees' right to personal expression and views blogs as a personal project, employees must also understand that a personal blog can impact the Company.

Guidelines regarding the posting to a personal blog are included in a Blogging Policy available on Channel E*, but, in general you must be aware that you may not in any way purport to represent the business, activities and/or opinions of E*TRADE FINANCIAL. If you choose to discuss your employment or identify yourself as a Company employee in any way, you must include a disclaimer that the views expressed are not authorized by the Company nor do they necessarily reflect the views of the Company.

Further, as more fully described elsewhere in this Code and the "Agreement Regarding Employment and Proprietary Information and Inventions," you must refrain from disclosing confidential, proprietary, sensitive and/or trade secret information of the Company and third-parties in any form, including a blog.

Harassment of other employees will not be tolerated. Blogs must not violate any of the Company's polices, including this Code and the Company's Equal Employment Opportunity and Anti-Harassment Policies. When posting to your blog, be respectful of others. Assume that people, including co-workers and customers, are reading your blog. Even after you delete your blog, certain technology may still make that content available to readers. Since you can be held personally liable for content of your blog which is deemed to be libelous, obscene, harassing and/or defamatory, be sure to exercise common sense at all times.

The Company's Electronic Communications Policy governs all uses of Company computer equipment. You may not use the Company's computers or other Company systems to create or update your blog and you may not do so while at work or working for the Company. Further, as described in that policy, the Company reserves the right to monitor the use of Company computer equipment.

The Company, in its sole discretion, will determine whether a particular blog violates Company policies. The Company further reserves the right to request that employees refrain from commenting on topics related to the Company (or, if necessary, suspend the blog altogether), particularly if securities or other laws are implicated.

Should you have any questions about this policy or how it may apply to your blog, please contact Human Resources.

Outside Lawyers

Our corporate legal strategy is coordinated across the lines of our business units to control costs and maintain consistent legal positions. For that reason you must obtain clearance from Legal before speaking to an outside lawyer or law firm on behalf of E*TRADE FINANCIAL. Only Legal can retain outside lawyers or law firms on E*TRADE FINANCIAL's behalf.

Treatment of Privileged Communications and Documents

Treat all communications and documents seeking or receiving legal advice and preparing for litigation as confidential and subject to attorney-client and/or work product privileges. This includes communications with, and documents created at the direction of, by or for, Legal or E*TRADE FINANCIAL's outside counsel. Communicate such information and documents within E*TRADE FINANCIAL on a strict need-to-know basis and only at the direction of Legal. Do not disclose such information or documents to anyone outside E*TRADE FINANCIAL unless specifically directed to do so by the Company's legal counsel.

Documents that are prepared for, or at the direction of, Legal or outside counsel, should be marked "Attorney-Client Communication, Privileged and Confidential." Note, however, that merely marking documents "Privileged" or "Confidential" does not provide legal protection from disclosure to a regulatory authority or a litigation adversary unless the document satisfies the legal requirements for the relevant privilege. Documents are not protected from disclosure to a regulator or in litigation merely because the author copies someone in Legal or because the author believes the documents are personal or private. Moreover, some foreign jurisdictions do not recognize the legal concept of privilege.

If you have any questions about whether a communication or document is privileged, consult Legal.

Litigation, Investigations, Inquiries and Complaints Notification

You must notify your direct supervisor and Legal and Compliance immediately in the event any of the following incidents occur:

- At any time during your employment you are indicted, convicted of, or plead guilty or no contest to, any felony in a domestic, military or foreign court;
- At any time during your employment you are indicted, convicted of, or
 plead guilty or no contest to, any misdemeanor that involves the purchase
 or sale of any security, the taking of a false oath, the making of a false
 report, bribery, perjury, burglary, larceny, theft, robbery, extortion, forgery,
 counterfeiting, fraudulent concealment, embezzlement, fraudulent
 conversion, misappropriation of funds or securities, conspiracy to commit
 any of these offenses, or any substantially equivalent activity in a
 domestic, military or foreign court;
- At any time during your employment you are named as a defendant or respondent in any securities or commodities-related civil litigation;

- At any time during your employment you are named as a defendant or respondent in any proceeding brought by a governmental agency or selfregulatory organization alleging a violation of any securities law or regulation;
- At any time during your employment you are found by any governmental agency or self-regulatory organization to have violated any provision of any securities law or regulation;
- At any time during your employment you receive a subpoena, inquiry or request from a governmental, regulatory or administrative agency or a claimant, plaintiff or outside attorney that involves, or has the potential for involving, E*TRADE FINANCIAL; or
- At any time during your employment you receive a customer complaint, whether made orally or in writing.

Please note that employees who maintain registrations with the NASD or other SRO's are also responsible for promptly notifying Compliance of any changes in the information that appears on the Forms U-4. Changes in U-4 information must be made within 30 days of the date of the change in information.

You must contact Legal or Compliance concerning the above matters at the earliest opportunity and provide updates and reports on the status of such matters on a regular basis. You must not take any action concerning E*TRADE FINANCIAL in the above matters without first contacting Legal or Compliance. Failure to do so may lead to disciplinary action, up to and including termination of your employment.

Cooperation

During litigation, an internal investigation, or a governmental, regulatory or administrative inquiry, audit or exam involving E*TRADE FINANCIAL, you may be asked to provide information, including documents, testimony or statements to Legal, Compliance, E*TRADE FINANCIAL's outside counsel, or a governmental, regulatory or administrative authority. You may also be asked to meet with these entities or persons. As a term and condition of your employment, you must consider such a request your top priority and you must cooperate fully with any such request, in coordination with Legal and Compliance, and you must provide truthful information. You are not permitted to discuss any such request, or the substance of any discussions or requests, with any third party, especially including an individual who is the subject of an investigation or inquiry, without prior approval from Legal and Compliance. If you are contacted by an individual who is the subject of an investigation and are requested to provide information about the investigation, you must inform the individual that you are not permitted to disclose any information and you must contact Legal and Compliance to

inform them of the contact. Failure to do so may subject you to civil or criminal liability and may be grounds for termination of your employment. In addition, E*TRADE FINANCIAL may provide information, including documents, testimony or statements, concerning you or your activities at E*TRADE FINANCIAL in connection with requests or inquiries by governmental, regulatory or administrative authorities. E*TRADE FINANCIAL strictly complies with all laws relating to the privacy of your personal information and will ordinarily provide you notice prior to producing any such information. However, it may not be appropriate or possible to provide such notice in every circumstance. E*TRADE FINANCIAL retains the discretion to provide any information in accordance with applicable law.

Communication with Governmental and Regulatory Authorities

Legal and Compliance supervise all contacts with governmental and regulatory bodies and attorneys regarding subpoenas, investigations, inquiries and requests. Do not initiate any contacts with a governmental or regulatory body or attorney regarding such matters without the permission of Legal or Compliance. If you are contacted about a subpoena, investigation, inquiry or request, follow the procedures outlined above.

E*TRADE FINANCIAL, working with the Legal Department and its outside government affairs representatives, supervises all other contacts with government and legislative officials. Do not initiate any contacts with such entities or individuals without the prior consent of Legal and the Company's designated government affairs representatives. If you are contacted about public policy or political matters, do not make any commitments or provide any substantive information unless and until Legal and the government affairs representatives have approved the response.

Communication Relating to Legal and Regulatory Matters

Litigation, investigations, inquiries and complaints involving E*TRADE FINANCIAL or its employees may be the subject of press coverage or inquiries and discussion inside and outside E*TRADE FINANCIAL. Consistent with the procedures in the Code entitled "Communications with the Media," you are not permitted to discuss such matters with the media, unless authorized by Corporate Communications, Legal or Compliance.

Do not communicate with claimants, their attorneys, or any other third party about Company litigation or regulatory matters. If a claimant, attorney, regulator or government agency contacts you, you should indicate that the matter is being handled by Legal and that you cannot discuss the matter without prior authorization from Legal. Direct the claimant, attorney, regulator or government agent to Legal and inform the relevant department of the contact as soon as possible. Be aware that your conversations might be recorded or monitored

without your knowledge or consent. If asked for permission by a third party, do not consent to the recording of any conversation without prior authorization from Legal.

Dealings with E*TRADE FINANCIAL

Dealings with E*TRADE FINANCIAL's Employees

When interacting with fellow employees, it is critically important to be honest, forthcoming and fair. Each and every employee must be treated with the dignity and respect that each of us deserves.

To help employees manage their performance, it is very important that those who supervise them give clear direction, feedback and support to their employees. E*TRADE FINANCIAL commits that all employees will receive performance reviews in accordance with our current performance review policy.

Protecting E*TRADE FINANCIAL's Assets

E*TRADE FINANCIAL's assets include, but are not limited to, its cash and securities, its premises, its technology, its proprietary and confidential information, its legally privileged materials, its intellectual property (such as software, business plans, nonpublic financial information, ideas for new products or services, and employee and customer lists), its brand and reputation. Specific policies with respect to protecting these assets are in E*TRADE FINANCIAL's policy on "Handling Proprietary and Confidential Information," which is outlined in this Code, as well as the "Agreement Regarding Employment and Proprietary Information and Inventions" signed by employees at the beginning of their employment.

In general, you must use E*TRADE FINANCIAL's assets solely for the benefit of E*TRADE FINANCIAL or its customers. In addition, you must safeguard these assets by adhering to E*TRADE FINANCIAL's security policies and procedures. Be alert to incidents that could lead to the loss, misuse or theft of Company property. Report all such occurrences immediately to your direct supervisor and, as appropriate, to Security.

Use of E*TRADE FINANCIAL's Information and Communications **Systems**

E*TRADE FINANCIAL maintains certain systems, including telephones, voicemail, electronic mail, computer networks, personal digital assistants and remote access capabilities to further E*TRADE FINANCIAL's business objectives. Any systems to which you are provided access are to be used for Company business purposes. You must adhere to all Company policies and any policies that your business unit or department may set governing such usage.

Generally, you should use E*TRADE FINANCIAL's systems only for Company business. You may use the systems for limited personal use in accordance with E*TRADE FINANCIAL policies governing communications and conduct generally. However, any use for personal profit or contrary to law or Company policies is prohibited. In addition, you may not use E*TRADE FINANCIAL's systems to send, store, view or forward unlawful, offensive, harassing, discriminatory or other inappropriate materials or messages, including pornography, inappropriate jokes, political or religious materials, violent or obscene language or images. Furthermore, you may not send, store or forward advertisements, solicitations or promotions not related to Company business except as expressly authorized by the Company.

Use sound judgment when composing or forwarding electronic mail, keeping in mind that email is just as valid a form of communication as a formal business letter, and should be crafted with the same level of decorum and formality. Such communications could be retained on E*TRADE FINANCIAL's systems even after you have deleted them. In addition, such communications could be copied and distributed widely by the recipient. Such distributions will likely include your name, e-mail address, e-mail signature and other information that would connect the distribution to you and E*TRADE FINANCIAL.

Generally, information made available through E*TRADE FINANCIAL's intranet is intended for internal use only. Please refer to the policies of your business unit or department and contact Legal or Compliance with any questions on the use of this information.

All software transmitted over, downloaded onto or installed on E*TRADE FINANCIAL's systems must be done in compliance with applicable laws and licenses and must be approved in advance by the E*TRADE FINANCIAL Technology Department. Unapproved software is strictly prohibited for a number of reasons, including prevention of unauthorized or unlawful use and transmission of computer viruses. Contact Legal with any questions.

Monitoring of Communications and Files

E*TRADE FINANCIAL reserves the right to monitor and review all written and electronic communications that employees send or receive at work or using E*TRADE FINANCIAL's systems, including electronic mail, voicemail, envelopes, packages or messages delivered to the Company, including items marked "Personal and Confidential." Authorized persons may, as permitted by applicable law, access your desk or workspace files, electronic mail, voicemail messages, internet usage records, telephone records, word processing files and other information files (for example, to monitor compliance with applicable laws, regulations or Company policies). In addition, E*TRADE FINANCIAL may, subject to applicable law, record and monitor conversations on Company telephones, for example, to ensure the accuracy of transaction records, to

comply with applicable laws and regulations, to evaluate the quality of customer service or to check compliance with Company policies.

All information stored on or transmitted using E*TRADE FINANCIAL's systems and all recordings and transcripts of telephone conversations are Company property. Subject to applicable law, you have no expectation of privacy regarding the use of any of these systems. In addition, under appropriate circumstances, regulators may gain access to this information and material.

E*TRADE FINANCIAL records certain telephone calls with customers in many circumstances; however you may not otherwise record any conversation, whether over the telephone or in person, or participate in any conversation that you know is being recorded, that relates to E*TRADE FINANCIAL's business or employees without the prior written approval from Legal or Compliance. You should also be aware that third parties may record your conversations without seeking your permission or giving prior notice.

Disputes with E*TRADE FINANCIAL

If you have a dispute with E*TRADE FINANCIAL relating to or arising out of your employment, your first course of action should be to bring that dispute to the attention of your supervisor, Human Resources, or any member of the Company's management team with whom you feel comfortable. The vast majority of issues can be addressed by simply talking them through. You should consult with Human Resources or Legal concerning any formal dispute resolution procedures that you may be required to use to resolve any dispute relating to your employment, including the termination of your employment. For example, U.S. registered employees who have signed a Form U4 are required to arbitrate many such disputes with E*TRADE FINANCIAL in accordance with the rules of the organizations with which they are registered. In addition, at the beginning of their employment, most employees signed a separate agreement specifically agreeing to arbitrate any dispute that may arise with E*TRADE FINANCIAL. If your dispute involves claims of discrimination or harassment, you should review the "Nondiscrimination and Anti-Harassment Policy" outlined in this Code.

Even if you are not required by contract to arbitrate a dispute with E*TRADE FINANCIAL, you should consult with Human Resources or Legal concerning the availability of any arbitration or mediation procedures that may have been established by E*TRADE FINANCIAL.

Substance Abuse

E*TRADE FINANCIAL seeks to maintain a safe work environment. Therefore, you may not sell, purchase, use, possess, or be under the influence of any illegal substance while on E*TRADE FINANCIAL's premises or while conducting Company business. In addition, you must abide by any Company policies concerning the use of alcohol at Company related or sponsored events, whether

or not on E*TRADE FINANCIAL's premises. You should contact Human Resources with any questions concerning such policies.

Post-Termination Obligations of Employees

You must return all identification badges and building access cards on or before your last day of work. Personal computers, laptops, personal digital assistants, printers and other peripheral devices, and any other equipment provided to you in the course of your employment are and remain the property of E*TRADE FINANCIAL and must be returned on or before the last day of your employment.

You must continue after the end of your employment to abide by E*TRADE FINANCIAL's policies concerning the handling of proprietary and confidential information, the treatment of inside information and the handling of privileged materials, as outlined in this Code and in any specific policies of your business unit or department. If you have downloaded such information onto any personal computer equipment, including a personal digital assistant, you are required to delete that information permanently from the equipment.

Each business unit or department may have its own policies and procedures for departing employees. Your supervisor and Human Resources can advise you of any policies and procedures that apply to your particular situation. If you have any questions about your post-termination obligations, please consult Human Resources, Legal or Compliance.



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Handling Proprietary and Confidential Information

Handling proprietary and confidential information in the appropriate manner safeguards E*TRADE FINANCIAL's assets and ensures compliance with regulations.

In this Code, we refer to "proprietary information" and "confidential information." Regardless of the terminology used, any information that meets either of the definitions described below may be considered "trade secrets" and is protected by the applicable law in your jurisdiction.

Definition of Proprietary Information

PROPRIETARY INFORMATION is Company information not known to the public that may have intrinsic value or that may provide E*TRADE FINANCIAL with a competitive advantage. Proprietary information includes, but is not limited to:

- computer programs and other systems information;
- algorithms;
- business, product or marketing plans;
- sales forecasts;
- · customer lists;
- intellectual property; and

business practices.

Proprietary information also includes the information derived from public sources but which becomes proprietary through E*TRADE FINANCIAL's aggregation or interpretation of that information.

Proprietary information may be present in various media and forms, including written documents, computer files, diskettes, videotapes, audiotapes and oral communications.

Definition of Confidential Information

CONFIDENTIAL INFORMATION is information that is not generally known to the public about E*TRADE FINANCIAL, its customers, its counterparties or other parties with which the Company has a relationship. Like proprietary information, confidential information may be present in various media and forms. The same information can be both confidential and proprietary.

Examples of confidential information concerning E*TRADE FINANCIAL and its employees, customers and counterparties include, but are not limited to:

- personal information;
- financial information;
- securities trades or holdings;
- business plans or projections:
- acquisition or divestiture plans;
- securities issuance, buyback or tender plans;
- restructuring or reorganization plans;
- legally privileged communications and materials;
- the identities of customers or counterparties of E*TRADE FINANCIAL;
- the existence and terms of agreements with customers or counterparties; and
- programs and materials on E*TRADE FINANCIAL's information systems.

Confidential information also may concern individuals or entities that are not customers or counterparties. You should treat as confidential any nonpublic information about individuals, companies or transactions if:

· it has not been publicly disseminated; and

it has been acquired directly or indirectly from an individual or company involved in an actual or potential transaction or a business relationship in which E*TRADE FINANCIAL may have a role, or anyone acting on behalf of the foregoing.

Guidelines for Accepting Proprietary or Confidential Information

Before accepting proprietary or confidential information from any third party, evaluate the consequences to E*TRADE FINANCIAL. The decision to accept such information may preclude E*TRADE FINANCIAL from doing other business involving the customer or counterparty. In general, do not accept information from a customer or counterparty beyond that which is necessary for the customer or counterparty to conduct its business with E*TRADE FINANCIAL. In addition, you should comply with any policies and pre-clearance procedures of your business unit or department concerning the acceptance of proprietary or confidential information. If you have any questions about this, you should contact Legal.

Confidentiality Agreements

No E*TRADE FINANCIAL employee is authorized to enter into any confidentiality or nondisclosure agreement without prior review and approval of the agreement by Legal. When presented with information from a third party you believe may be "confidential" to the third party, determine if the party intends for the information to be protected by a confidentiality agreement. If so, do not accept the confidential information until the agreement has been reviewed and approved by Legal and signed by an E*TRADE FINANCIAL employee with proper authority.

You must comply with the terms of any confidentiality agreement governing proprietary or confidential information in your possession or control, including procedures that call for the return or destruction of such information, consistent with E*TRADE FINANCIAL's records management policies and applicable law.

Using Proprietary or Confidential Information

Use proprietary or confidential information solely to perform your duties for E*TRADE FINANCIAL and not for your own personal benefit. Do not use proprietary or confidential information to engage in trading for your own account or to advise relatives, friends or other persons trading in securities or engaged in other financial services

Confidential information learned from one customer cannot be used for any other purpose or for any other customer.

Handling Materials Containing Proprietary or Confidential Information

Do not display, review or discuss proprietary or confidential information in public places (such as elevators, restaurants, airplanes or other areas where you may be overheard) or in front of outside vendors or other third parties. Remember that conversations conducted on a mobile phone are not always secure. Conversations dealing with confidential or proprietary information should be held on a land-line.

Proprietary or confidential information in physical form, including on electronic media such as a diskette, should not be left unattended unless it is secured behind a locked door or in locked office furniture. Do not leave proprietary or confidential information in conference rooms, in wastebaskets, on desks or anywhere else where it might be picked up and reviewed. Erase white and chalk boards thoroughly.

Information stored in computers, including personal digital assistants, laptops and workstations must be protected by passwords, encryption or other mechanisms that ensure only authorized individuals can access the information. Do not leave your computer(s) unattended unless you have locked it or signed off, and do not disclose your computer or voicemail passwords to anyone at or outside E*TRADE FINANCIAL.

Whenever possible, mark confidential or proprietary documents with "E*TRADE FINANCIAL Confidential" and/or "E*TRADE FINANCIAL Proprietary."

Do not remove proprietary or confidential information from Company premises unless absolutely necessary. E*TRADE FINANCIAL reserves the right to deny you permission to remove any proprietary and confidential information from Company premises. If you take such information out of the office for business purposes, keep it on your person or in a secure place at all times and return it promptly to Company premises.

Communicating Proprietary or Confidential Information

Exercise care when sending or discussing proprietary or confidential data on voicemail, electronic mail, mobile or cordless phones, fax machines or message services. Make sure you use correct electronic mail addresses, telephone extension numbers, fax numbers and, when applicable, use project and code names.

Within E*TRADE FINANCIAL, communicate proprietary or confidential information only to employees who have a legitimate business reason to know the information and who have no responsibilities or duties that could give rise to a conflict of interest

Do not disclose proprietary or confidential information to any person outside E*TRADE FINANCIAL (including family members), or use it or permit any third party to use it without first obtaining Legal and Compliance approval.

Disposal of Proprietary or Confidential Waste

When no longer of use, proprietary or confidential information must be disposed of in a manner that renders it unreadable and non-reconstructable, using means and methods approved by E*TRADE FINANCIAL (for example, approved shredders or confidential waste bins), consistent with E*TRADE FINANCIAL's records management and information security policies and applicable law. Information contained on electronic storage media (for example, a diskette or zip cartridge) should be destroyed in a manner that renders it unreadable and unrecoverable.

Proprietary or Confidential Information Concerning Securities

When proprietary or confidential information might affect the price of a security or other financial instrument, or the decision to buy or sell securities or other financial instruments, the laws concerning insider trading also govern your responsibilities, regardless of whether you are given specific instructions or reminders that particular information may be "inside" information.

E*TRADE FINANCIAL has developed strict procedures to ensure compliance with the laws of each jurisdiction in which it does business. These procedures are critical to the protection of the E*TRADE FINANCIAL franchise and are described in E*TRADE FINANCIAL's policy on the "Treatment of Inside Information", which is outlined in this Code. Remember that these restrictions apply to information relating to the stock of third parties as well as to the Company's stock.

Confidentiality Obligations to Previous Employers and other Third Parties

As provided in your "Agreement Regarding Employment and Proprietary Information and Inventions", upon commencing your employment with E*TRADE FINANCIAL, you must disclose and provide a copy of any confidentiality, noncompete or nondisclosure agreements or obligations between you and any third party (for example, a former employer) to which you are subject. You also must disclose any inventions developed by you or intellectual property owned by you prior to your employment or as part of any outside business activity during your employment, to the extent that you are permitted to do so.

You may not use proprietary or confidential information gained elsewhere, including inventions developed in any employment outside of E*TRADE FINANCIAL, to benefit E*TRADE FINANCIAL or its employees, customers or business partners without written consent from Legal.

Ownership of Intellectual Property

E*TRADE FINANCIAL owns all rights in any intellectual property developed by you during your employment that relate to E*TRADE FINANCIAL's business, even if invented or otherwise developed outside E*TRADE FINANCIAL premises and even if no E*TRADE FINANCIAL equipment was used in the process. For this purpose, E*TRADE FINANCIAL's intellectual property includes any invention or design (whether or not patentable or reduced to practice) and all related patents and patent applications, any copyrightable work, any trademarks or service marks (and related registrations or applications for registration) and any trade secrets. Some E*TRADE FINANCIAL intellectual property is proprietary information that should be treated in accordance with the standards set forth in this Code.

Post-Employment Use of Proprietary or Confidential Information

You may not disclose proprietary or confidential information of E*TRADE FINANCIAL or any third party outside of the Company at any time, including after termination of employment. You may not take such proprietary or confidential information when leaving E*TRADE FINANCIAL or use or disclose such information for your own personal benefit or for the benefit of your new employer or prospective new employer. You may not permit its disclosure or use by any third party.

In exceptional circumstances, the Company may grant a written waiver of the prohibitions on post-employment disclosure. The grant of a waiver is at the sole discretion of E*TRADE FINANCIAL and will occur only if, among other things, the party receiving the proprietary or confidential information signs a formal non-disclosure agreement prepared by Legal.

This policy does not restrict you from obtaining employment in any capacity elsewhere, provided you do not use or disclose proprietary or confidential information.

E*TRADE FINANCIAL reserves the right to review all materials you plan to take with you when you leave E*TRADE FINANCIAL and to remove any proprietary or confidential information that you may have stored on your personal computer equipment, including personal digital assistants.

Preventing Improper Use of Proprietary or Confidential Information

E*TRADE FINANCIAL will vigorously enforce its rights to prevent any current or former employee from improperly taking, disclosing or using proprietary or confidential information, or permitting others to do the same. You should report violations or suspected violations of this policy or the policy of any specific

business unit or department to an appropriate supervisor, to Legal and, if necessary or appropriate, Security.

EXHIBIT 4

October 2, 2003

Marcus Hernandez 341 West 24th St. #8G New York, NY 10011

Dear Marcus:

On behalf of E*TRADE Securities ("E*TRADE FINANCIAL" or the "Company"), I am pleased to offer you the position of Investment Specialist. You will be reporting to Roderick Mikus and will start on a date to be mutually agreed upon. This offer of employment is contingent upon E*TRADE FINANCIAL obtaining acceptable/verifiable references from your prior employers.

You will be paid in accordance with the Investment Specialist compensation plan - see enclosed details.

In addition to the compensation and benefits described in this letter, we will recommend to the Board of Directors or its appropriate committees that you be granted an option to purchase 700 shares of E*TRADE FINANCIAL common stock under the Company's stock option plan. The option would vest and become exercisable in accordance with the Company's standard 4-year annual vesting schedule. The exercise price of the option will be equal to the average of the high and low trading price for E*TRADE FINANCIAL common stock on the date of the grant. Stock option grant requests are ordinarily considered on Fridays, and your grant would likely be considered and approved within the first few weeks of your employment. If approved by the Board or the appropriate committee, your option grant will be subject to your acceptance of the terms and conditions of our standard stock option agreement.

You will be eligible to participate in the health benefits package beginning on your first day of employment. You must enroll for your benefits within 31 calendar days from your E*TRADE FINANCIAL hire date. Employees who do not elect their benefits online within 31 calendar days will have to wait until open enrollment to participate. For information on benefits, go to https://us.etrade.com/etbenefits. As with any company, E*TRADE FINANCIAL's benefits may change from time to time. In addition, you will receive a special discount on trading commissions for trades made through an E*TRADE FINANCIAL account which you may wish to set up.

As you will see on the E*TRADE FINANCIAL website www.etrade.com, you are automatically enrolled in the E*TRADE FINANCIAL 401(k) Plan ("Plan") on your date of hire. Unless you elect otherwise, 3% of your compensation will automatically be withheld from your paycheck and contributed to the Plan each payday. The 401k contribution will begin on the pay period following your completion of the online benefits enrollment or after your 31st day of employment (whichever occurs first.)

Further information regarding our benefit plans will be provided to you when you join the company Heather Larson at 646-521-4713.

As part of our commitment to our values, it is the policy of the Company to provide employees with a written annual focal performance review. Performance is measured on a three point scale, from "Top Contributor" (which means that the employee consistently exceeds expectations and creates significant shareholder value by delivering high quality and measurable results) to a "Sustained Contributor" (which means that the employee meets and often exceeds expectations, delivers high quality measurable results on a consistent basis) to "Need Improvement" (which means that the employee achieves some but not all expectations: that the current level of performance is below an acceptable level). Performance ratings are distributed according to the E*TRADE FINANCIAL Performance Based Management Program which means that all employees receive focal reviews once a year for performance. Depending on the circumstances, employees who are rated as "Needs Improvement" are typically either placed on a formal performance improvement plan or asked to find employment outside the Company. We believe this policy enables all of our employees to have a more successful and satisfying work experience by being provided a frank assessment of their performance on a regular basis, and to enable those employees whose talents are not well suited to our particular work environment to create a more successful experience for themselves elsewhere. E*TRADE FINANCIAL reserves the right to modify this policy at its sole discretion. Our focal reviews are generally conducted annually in January.

Document 5-5

In any case, your employment, should you accept this offer, is at will, meaning it will be for no specified period. As a result, you will be free to resign at any time for any reason or for no reason, as you deem appropriate. E*TRADE FINANCIAL will have a similar right and may conclude its employment relationship with you at any time for any reason, with or without cause. Although other company policies may change from time to time, our policy of at-will employment may be changed only in writing entered into for that purpose and signed by the Chairman and CEO of the Company. Employment with E*TRADE FINANCIAL is contingent on the successful completion of a background investigation including a criminal conviction record check. In addition, employment in this position beyond 60 days is subject to a National Association of Securities Dealers background check. Also, for purposes of federal immigration law, you will be required to provide the company documentary evidence of your identity and eligibility for employment in the United States within 3 business days of your date of hire. In addition, your employment is contingent upon your execution of our standard Proprietary Information Agreement, a copy of which is enclosed.

In the event of any dispute or claim relating to or arising out of your employment relationship with E*TRADE FINANCIAL, this agreement, or the termination of your employment with E*TRADE FINANCIAL for any reason (including, but not limited to, any claims of breach of contract, wrongful termination or age, sex, race, national origin, disability or other discrimination or harassment), you and E*TRADE FINANCIAL agree that all such disputes shall be fully, finally and exclusively resolved by binding arbitration to the fullest extent permitted by law. The arbitration will be conducted by the American Arbitration Association in San Mateo County, California. You and E*TRADE FINANCIAL hereby waive your respective rights to have any such disputes or claims tried to a judge or jury. Provided, however, that this arbitration provision shall not apply to any disputes or claims relating to or arising out of the actual or alleged misuse or misappropriation of E*TRADE FINANCIAL's property, including, but not limited to, its trade secrets or proprietary information.

The employment terms in this letter, the Code of Conduct and the Propriety Information Agreement referred to above constitute the entire agreement between you and the Company regarding the terms and conditions of your employment and supersede any other agreement or promise that may have been made to you by anyone, whether oral or written. The provisions of this agreement regarding "at will" employment may only be modified by a document signed by you and the Chairman and CEO of the company.

Document 5-5

We are excited about having you join the E*TRADE FINANCIAL team. To accept our offer under the terms described above, please sign and date this letter, return the original (and all accompanying documents) to me within 5 business days and keep a copy for your files. New Hire orientation will be held on the first Monday of your hire date. The Compliance portion of your New Hire orientation is MANDATORY and affects your ability to trade your E*TRADE FINANCIAL stock. You must attend this portion of the meeting, and will be required to sign an attendance list as verification.

Regards.

Kristi Henderson

Sr. Recruiter, Staffing

Accepted by:

EXHIBIT 5

EMPLOYMENT AGREEMENT PROPRIETARY INFORMATION AND INVENTIONS AND ARBITRATION OF EMPLOYMENT DISPUTES

The following Agreement confirms certain terms of my employment with E*TRADE Group, Inc. (hereafter referred to as "the Company"), which is a material part of the consideration for my employment by the Company and the compensation received by me from the Company from time to time. The headings contained in this Agreement are for convenience only, have no legal significance, and are not intended to change or limit this Agreement in any matter

PROPRIETARY INFORMATION AND INVENTIONS

A. Definitions

1. The "Company"

As used in this Agreement, the "Company" refers to E*TRADE Group, Inc. and each of its subsidiaries or affiliated companies. I recognize and agree that my obligations under this Agreement and all terms of this Agreement apply to me regardless of whether I am employed by or work for E*TRADE Group, Inc. or any other subsidiary or affiliated company of E*TRADE Group, Inc. Furthermore, I understand and agree that the terms of this Agreement will continue to apply to me even if I transfer at some time from one subsidiary or affiliate of the Company to another.

2. "Proprietary Information"

I understand that the Company possesses and will possess Proprietary Information which is important to its business. For purposes of this Agreement, "Proprietary Information" is information that was developed, created, or discovered by or on behalf of the Company, or which became or will become known by, or was or is conveyed to the Company, which has commercial value in the Company's business.

"Proprietary Information" includes, but is not limited to, software programs and subroutines, source and object code, algorithms, trade secrets, designs, technology, know-how, processes, data, ideas, techniques, inventions (whether patentable or not), works of authorship, formulas, business and product development plans, customer lists, terms of compensation and performance levels of Company employees, and other information concerning the Company's actual or anticipated business, research or development, or which is received in confidence by or for the Company from any other person.

I understand that my employment creates a relationship of confidence and trust between the Company and me with respect to Proprietary Information.

3. "Company Documents and Materials"

I understand that the Company possesses or will possess "Company Documents and Materials" which are important to its business. For purposes of this Agreement, "Company Documents and Materials" are documents or other media or tangible items that contain or embody Proprietary Information or any other information concerning the business, operations or plans of the Company, whether such documents, media or items have been prepared by me or by others.

"Company Documents and Materials" include, but are not limited to, blueprints, drawings, photographs, charts, graphs, notebooks, customer lists, computer disks, tapes or printouts, sound recordings and other printed, typewritten or handwritten documents, sample products, prototypes and models.

B. Assignment of Rights

All Proprietary Information and all patents, patent rights, copyrights, trade secret rights, trademark rights and other rights (including, without limitation, intellectual property rights) anywhere in the world in connection therewith is and shall be the sole property of the Company. I hereby assign to the Company any and all rights, title and interest I may have or acquire in such Proprietary Information.

At all times, both during my employment by the Company and after its termination, I will keep in confidence and trust and will not use or disclose any Proprietary Information or anything relating to it without the prior written consent of an officer of the Company, except as may be necessary in the ordinary course of performing my duties to the Company.

C. Maintenance and Return of Company Documents and Materials

I agree to make and maintain adequate and current written records, in a form specified by the Company, of all inventions, trade secrets and works of authorship assigned or to be assigned to the Company pursuant to this Agreement. All Company Documents and Materials are and shall be the sole property of the Company.

I agree that during my employment by the Company, I will not remove any Company Documents and Materials from the business premises of the Company or deliver any Company Documents and Materials to any person or entity outside the Company, except as I am required to do in connection with performing the duties of my employment. I further agree that, immediately upon the termination of my employment by me or by the Company for any reason, or during my employment if so requested by the Company, I will return all Company Documents and Materials, apparatus, equipment and other physical property, or any reproduction of such property, excepting only (i) my personal copies of records relating to my compensation; (ii) my personal copies of any materials previously distributed generally to stockholders of the Company; and (iii) my copy of this Agreement.

D. Disclosure of Inventions to the Company

I will promptly disclose in writing to my immediate supervisor or to such other person designated by the Company all "Inventions," which includes, without limitation, all software programs or subroutines, source or object code, algorithms, improvements, inventions, works of authorship, trade secrets, technology, designs, formulas, ideas, processes, techniques, know-how and data, whether or not patentable, made or discovered or conceived or reduced to practice or developed by me, either alone or jointly with others, during the term of my employment.

I will also disclose to the President of the Company all Inventions made, discovered, conceived, reduced to practice, or developed by me within six (6) months after the termination of my employment with the Company which resulted, in whole or in part, from my prior employment by the Company. Such disclosures shall be received by the Company in confidence (to the extent such Inventions are not assigned to the Company pursuant to Section (E) below) and do not extend the assignment made in Section (E) below.

E. Right to New Ideas

1. Assignment of Inventions to the Company

I agree that all Inventions which I make, discover, conceive, reduce to practice or develop (in whole or in part, either alone or jointly with others) during my employment shall be the sole property of the Company to the maximum extent permitted by Section 2870 of the California Labor Code or any like statute of any other state. Section 2870 provides as follows:

- a. Any provision in an employment agreement which provides that an employee shall assign, or offer to assign, any of his or her rights in an invention to his or her employer shall not apply to an invention that the employee developed entirely on his or her own time without using the employer's equipment, supplies. facilities, or trade secret information except for those inventions that either:
 - (1) Relate at the time of conception or reduction to practice of the invention to the employer's business, or actual or demonstrably anticipated research or development of the employer.
 - (2) Result from any work performed by the employee for his employer.
- b. To the extent a provision in an employment agreement purports to require an employee to assign an invention otherwise excluded from being required to be assigned under subdivision (a), the provision is against the public policy of this state and is unenforceable.

This assignment shall not extend to Inventions, the assignment of which is prohibited by Labor Code Section 2870.

2. Works Made for Hire

The Company shall be the sole owner of all patents, patent rights, copyrights, trade secret rights, trademark rights and all other intellectual property or other rights in connection with Inventions that are the sole property of the Company. I further acknowledge and agree that such Inventions, including, without limitation, any computer programs, programming documentation, and other works of authorship, are "works made for hire" for purposes of the Company's rights under copyright laws. I hereby assign to the Company any and all rights, title and interest I may have or acquire in such Inventions. If in the course of my employment with the Company, I incorporate into a Company product, process or machine a prior Invention owned by me or in which I have interest, the Company is hereby granted and shall have a nonexclusive, royalty-free, irrevocable, perpetual, sublicensable, worldwide license to make, have made, modify, use, market, sell and distribute such prior Invention as part of or in connection with such product, process or machine.

3. Best Efforts

I agree to perform, during and after my employment, all acts deemed necessary or desirable by the Company to permit and assist it, at the Company's expense, in further evidencing and perfecting the assignments made to the Company under this Agreement and in obtaining, maintaining, defending and enforcing patents, patent rights, copyrights, trademark rights, trade secret rights or any other rights in connection with such Inventions and improvements thereto in

any and all countries. Such acts may include, but are not limited to, execution of documents and assistance or cooperation in legal proceedings. I hereby irrevocably designate and appoint the Company and its duly authorized officers and agents, as my agents and attorney-in-fact to act for and on my behalf and instead of me, to execute and file any documents, applications or related findings and to do all other lawfully permitted acts to further the purposes set forth above in this subsection (3), including, without limitation, the perfection of assignment and the prosecution and issuance of patents, patent applications, copyright applications and registrations, trademark applications and registrations or other rights in connection with such Inventions and improvements thereto with the same legal force and effect as if executed by me.

4. Assignment or Waiver of Moral Rights

Any assignment of copyright hereunder (and any ownership of a copyright as a work made for hire) includes all rights of paternity, integrity, disclosure and withdrawal and any other rights that may be known as or referred to as "moral rights" (collectively "Moral Rights"). To the extent such Moral Rights cannot be assigned under applicable law and to the extent the following is allowed by the laws in the various countries where Moral Rights exist, I hereby waive such Moral Rights and consent to any action of the Company that would violate such Moral Rights in the absence of such consent.

5. List of Inventions

I have attached hereto as Exhibit A. a complete list of all Inventions or improvements to which I claim ownership and that I desire to remove from the operation of this Agreement, and I acknowledge and agree that such list is complete. If no such list is attached to this Agreement, I represent that I have no such Inventions and improvements at the time of signing this Agreement.

F. Non-Solicitation of Company Employees

During the term of my employment and for one (1) year thereafter, I will not encourage or solicit any employee of the Company to leave the Company for any reason or to accept employment with any other company. As part of this restriction, I will not interview or provide any input to any third party regarding any such person during the period in question. However, this obligation shall not affect any responsibility I may have as an employee of the Company with respect to the bona fide hiring and firing of Company personnel.

G. Company Authorization for Publication

Prior to my submitting or disclosing for possible publication or dissemination outside the Company any material prepared by me that incorporates information that concerns the Company's business or anticipated research, I agree to deliver a copy of such material to an officer of the Company for his or her review. Within twenty (20) days following such submission, the Company agrees to notify me in writing whether the Company believes such material contains any Proprietary Information or Inventions, and I agree to make such deletions and revisions as are reasonably requested by the Company to protect its Proprietary Information and Inventions. I further agree to obtain the written consent of the Company prior to any review of such material by persons outside the Company.

H. Duty of Loyalty

I agree that, during my employment with the Company, I will not provide consulting services to or become an employee of, any other firm or person engaged in a business in any way competitive with the Company or involved in the design, development, marketing, sale or distribution of any networking or software products, without first informing the Company of the existence of such proposed relationship and obtaining the prior written consent of my manager and the Human Resource Manager responsible for the organization in which I work.

i. Former Employer Information

I represent that my performance of all the terms of this Agreement and as an employee of the Company does not and will not breach any agreement to keep in confidence proprietary information, knowledge or data acquired by me in confidence or in trust prior to my employment by the Company, and I will not disclose to the Company or induce the Company to use any confidential or proprietary information or material belonging to any previous employers or others. I have not entered into and I agree I will not enter into any agreement, either written or oral, in conflict herewith or in conflict with my employment with the Company. I further agree to conform to the rules and regulations of the Company.

J. At-Will Employment

I agree and understand that employment with the Company is "at-will," meaning that it is not for any specified period of time and can be terminated by me or by the Company at any time, with or without advance notice, and for any or no particular reason or cause. I agree and understand that it also means that job duties, title and responsibility and reporting level, compensation and benefits, as well as the Company's personnel policies and procedures, may be

changed at any time at-will by the Company. I understand and agree that nothing about the fact or the content of this Agreement is intended to, nor should be construed to, alter the at-will nature of my employment with the Company.

I understand and agree that this Agreement is the complete agreement between the Company and me regarding the nature of my employment with the Company. I also understand and agree that the at-will nature of employment with the Company can only be changed by the Company President in an express writing signed and dated by him or her and by me.

K. Severability

I agree that if one or more provisions of this Agreement are held to be unenforceable under applicable law, such provisions shall be excluded from this Agreement and the balance of the Agreement shall be interpreted as if such provision were so excluded and shall be enforceable in accordance with its terms.

L. Authorization to Notify New Employer

- 1. I hereby authorize the Company to notify my new employer about my rights and obligations under this Agreement following the termination of my employment with the Company.
- 2. This Agreement sets forth the entire agreement and understanding between the Company and me relating to the subject matter herein and merges all prior discussions between us, including but not limited to any and all statements made by any officer, employee or representative of the Company regarding the Company's financial condition or future prospects. I understand and acknowledge that, except as set forth in this Agreement and in the offer letter from the Company to me, (i) no other representation or inducement has been made to me, (ii) I have relied on my own judgment and investigation in accepting my employment with the Company, and (iii) I have not relied on any representation or inducement made by any officer, employee or representative of the Company. No modification of or amendment to this Agreement nor any waiver of any rights under this Agreement will be effective unless in a writing signed by the President of the Company and me. I understand and agree that any subsequent change or changes in my duties, salary or compensation will not affect the validity or scope of this Agreement.

M. Effective Date

This Agreement shall be effective as of the first day of my employment with the Company and shall be binding upon me, my heirs, executor, assigns and administrators and shall inure to the benefit of the Company, its subsidiaries, successors and assigns.

N. Governing Law

Although I may work for the Company outside of California or the United States, I understand and agree that this Agreement shall be interpreted and enforced in accordance with the laws of the State of California.

I HAVE READ THIS AGREEMENT CAREFULLY AND I UN		
IT IMPOSES UPON ME WITHOUT RESERVATION. NO F		
TO ME TO INDUCE ME TO SIGN THIS AGREEMENT. IS	SIGN-THIS AGREEMENT VOLUNTARILY AND FRE	ELY.
Mrst	10/7/63	
Employee's Signature	Date	
MARCUS J. Hernandez		
Employee's Name - Printed		

AGREEMENT TO ARBITRATE EMPLOYMENT DISPUTES

I agree that any existing or future dispute or controversy arising out of my employment with the Company or the termination thereof, or arising under the terms of this Agreement shall be resolved by binding arbitration in accordance with the "National Rules for the Resolution of Employment Disputes" of the American Arbitration Association ("AAA") then in effect.

Scope of Disputes and Claims to Be Arbitrated

Notwithstanding the at-will nature of employment with the Company, I understand and agree that this Agreement shall apply to any and all disputes and claims arising from and relating to my employment with the Company, whether the dispute or claim arises in tort or contract; pursuant to statute, regulation or otherwise, now in existence or which may in the future be enacted, amended or judicially recognized, including without limitation disputes and claims arising from and relating to this Agreement and:

- claims for breach of contract or contractual obligation whether such alleged contract or obligation be oral or written, or express or implied by fact or law;
- claims of wrongful termination, including violation of public policy and constructive discharge:
- claims of non-payment or incorrect payment of wages, commissions, bonuses, severance, employee fringe benefits, and the like whether such claims be pursuant to alleged express or implied contract or obligation. equity, the California Labor Code, the Fair Labor Standards Act, the Employee Retirement income Securities Act, and any other local, state or federal law concerning wages, compensation or employee benefits;
- claims of discrimination under the Age Discrimination in Employment Act, Title VII of the Civil Rights Act of 1964, the Americans With Disabilities Act, the Family and Medical Care Leave Act, the Employee Retirement income Securities Act, the California Fair Employment and Housing Act, the California Family Rights Act, the California Labor Code and any other local, state or federal law concerning employment discrimination;
- claims for infliction of emotional distress, misrepresentation, interference with contract or prospective economic advantage, violation of public policy, defamation, and any other tort or tort-like causes of action relating to or arising from the employment relationship or termination thereof;

I understand and agree that arbitration of such disputes and claims shall be the sole and exclusive mechanism for resolving any and all existing and future disputes or controversies arising out of my employment with the Company or the termination thereof, with the following exceptions which will be resolved as required by law then in effect:

claims for benefits under the workers' compensation, unemployment insurance and state disability insurance

Decision of Arbitrator Binding; Waiver of Trial Before Court, Jury or Government Agency

I understand and agree that this Agreement provides that arbitration shall be instead of a trial before a court or jury, or a hearing before a government agency. I understand and agree that the decision of the arbitrator shall be final and binding on both myself and the Company, it shall provide the exclusive remedy(ies) for resolving any and all disputes between myself and the Company arising from our employment relationship, and it shall be enforceable by any court have proper jurisdiction thereof.

I understand and agree that by signing this Agreement and accepting employment with the Company, I am expressly waiving any and all rights and benefits conferred on me by federal, state or local law to a trial before a court or jury or before a government agency regarding any dispute and claim which I now have (whether or not known or suspected) or which I may in the future have with the Company.

Initiating Arbitration; Time Limitation

I understand and agree that within one year of the occurrence of the event, act or omission giving rise to a dispute or the dispute, itself, whichever occurs later, either I or the Company may initiate arbitration under this Agreement by giving written notice to the other. Failure to initiate arbitration within this one year time period shall constitute a waiver of any and all claims arising from the event, act, omission or dispute which shall then be forever barred.

Place of Arbitration

I understand and agree that arbitration of disputes arising from my employment with the Company shall take place within the County of Santa Clara, State of California.

EXHIBIT A

1. The following is a complete list of all Inventions or improvements relevant to the subject matter of my employment by the Company that have been made or discovered or conceived or first reduced to practice by me or jointly with others prior to my employment by the Company that I desire to remove from the operation of the Company's Proprietary Information and Inventions Agreement:

No inventions or improvements. See below: Any and all inventions regarding: Additional sheets attached.

2.	I propose to bring to my employment the following materials and documents of a former em	
	No materials or documents	ī
	See below: //) /
	Mall	1019/03
	111/10/20	

Employee's Signature

Date

Costs of Arbitration

I understand and agree that both I and the Company shall share equally the cost of the arbitration filing and hearing fees, and the cost of the arbitrator. I understand and agree that I and the Company shall bear our own attorneys' fees incurred in connection with the arbitration, and that the arbitrator will not have authority to award attorneys fees unless a statute at issue in the dispute authorizes the award of attorneys fees to the prevailing party, in which case the arbitrator shall have the authority to make an award of attorneys fees to the extent and as permitted by the applicable statute.

Governing Law

I understand and agree that this *Agreement* and its validity, construction and performance shall be governed in all respects by the laws of the State of California, without giving effect to its conflict of laws principles. Further, the arbitration shall be conducted in accordance with the rules and procedures of *California Code of Civil Procedure* Section 1280 et seq. ("C.C.P.") and, unless in conflict with the C.C.P. or as provided herein, the "National Rules for the Resolution of Employment Disputes" of the AAA in effect at the time the dispute arises.

Severability

I understand and agree that if any term, or portion thereof, of this *Agreement* shall for any reason be held to be invalid or unenforceable or to be contrary to public policy or any law, then the remainder of this *Agreement* shall not be affected by such invalidity or unenforceability, but shall remain in full force and effect as if the invalid or unenforceable term, or portion thereof, had not existed within this *Agreement*.

Complete Agreement

I understand and agree that this *Agreement* contains the complete agreement between the Company and me regarding all subjects covered herein; that it supersedes and any all prior representations and agreements, if any; and that it may be modified only in a writing, expressly referencing this *Agreement* and me by full name, and signed by the President of the Company.

Knowing and Voluntary Agreement

I acknowledge that I have been advised to consult with an attorney of my own choosing before signing this Agreement, and that I have had an opportunity to do so.

I acknowledge that I have read this *Agreement* and I understand its terms and that, by signing it and accepting employment with the Company, I am acknowledging at-will employment and am waiving all rights to a trial before a court or jury of any and all disputes and claims regarding my employment with the Company or the termination thereof, except as otherwise noted herein, that now exist or may in the future exist or be known or suspected by me.

Employee's Signature

Employee's Name - Printed

EXHIBIT 6

ACKNOWLEDGEMENT

I hereby acknowledge that I have received a copy of the E*TRADE Group, Inc. Code of Professional Conduct (the "Code") and that I have, or will, thoroughly review the contents of the Code.

I understand that as an Associate of the E*TRADE Group, Inc. family of companies, I am responsible for complying with all laws and regulations applicable to our business and all provisions of the Code, as well as all other corporate policies and procedures.

After reviewing the Code, if I realize there are any provisions with which I have not previously complied (for example, maintaining a brokerage or trading account with an outside broker without prior approval from Legal and Compliance, participating in an investment club or serving on the board of directors of an outside entity without prior approval from Legal and Compliance), I will promptly notify Legal and Compliance so that the matter can be brought in line with the requirements of the Code.

I understand that if I have any questions about the application of the Code in any situation, I should stop and reflect, and draw from the experience of senior management and the guidance of our Legal and Compliance professionals.

Dated: 10/7/03

cut and remove

Associate Signature

Associate Name Printed

EXHIBIT 7

ACKNOWLEDGEMENT

I hereby acknowledge that I have received a copy of the E*TRADE FINANCIAL Code of Professional Conduct (the "Code") and that I have reviewed the contents of the Code.

I understand that as an E*TRADE FINANCIAL employee I am responsible for complying with all laws and regulations applicable to our business and all provisions of the Code, as well as all other corporate policies and procedures and that it is not an excuse to claim that I did not read or understand a provision of the Code.

After reviewing the Code, if I realize there are any provisions with which I have not complied (for example, maintaining a brokerage or trading account with an outside broker without prior approval from Compliance, participating in an investment club or serving on the board of directors of an outside entity without prior approval from Compliance), I will promptly notify the appropriate department so that the matter can be brought in line with the requirements of the Code.

I understand that if I have any questions about the application of the Code in any situation, I should immediately seek guidance from my supervisor, Legal or Compliance.

Dated: 12/1/2456

Employee's Signature

Employee's Name Printed

EXHIBIT 8

JAN. 24. 2008 10:25AM

NO. 2516 P. 2

1/18/2008

Etrade,

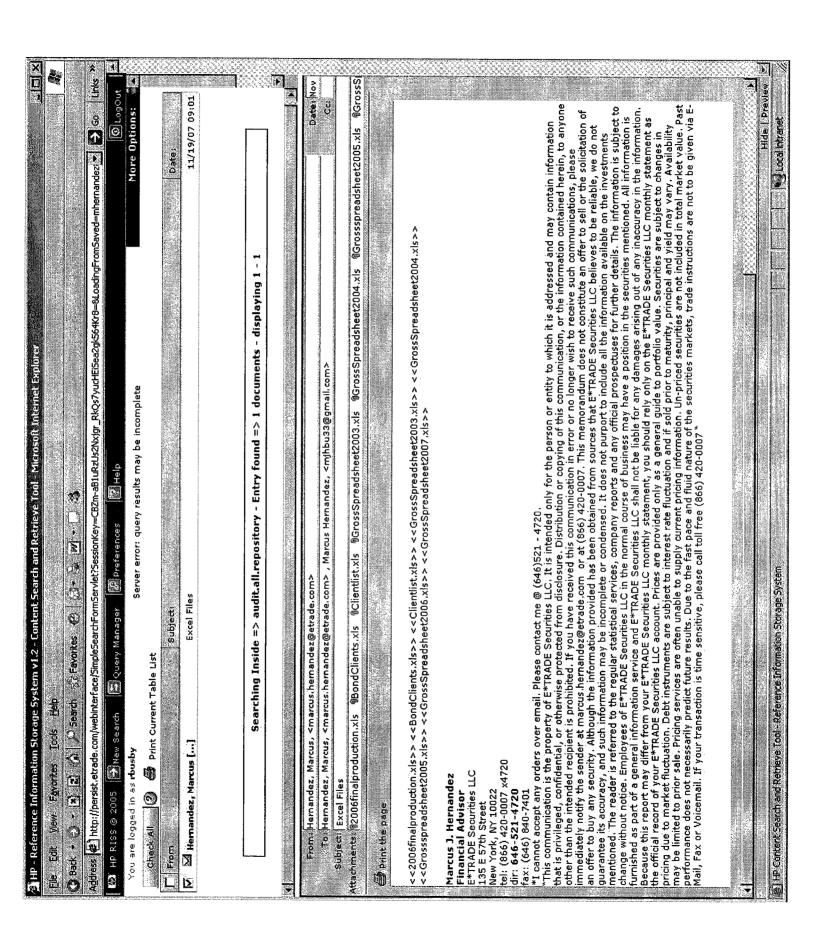
Please accept this letter as my official resignation effective immediately.

Sincerely,

Marcus J. Hernandez

. . . .

EXHIBIT 9



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REDACTED

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Totals

Email offerings A rated or better qualified 6-9%

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Total Year

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Follow up 3-Dec 4-Mar 4-Jun

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Date Gross Payout

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January 25, 2008

医抗性结核 机制造器

To Whom It May Concern at E*TRADE:

Effective immediately, I hereby resign my position as Financial Advisor at E*TRADE Financial. I or a representative of mine will pick up my remaining personal items next week.

Sincerely,

Scott Reilly



January 23, 2008

Via Federal Express

Mr. Marcus Hernandez 229 Canterbury Court Blue Bell, PA 19422

Re: Change of Employment

Dear Mr. Hernandez:

In conjunction with your resignation effective January 18, 2008, enclosed are the following documents:

- 1) Notice to Employee as to Change in Relationship two copies, one for your records and one for you to sign and return in the self-addressed envelope provided.
- 2) Overview of Termination Options regarding all benefit plans, including: Medical/Dental/ Vision--COBRA information; Flexible Spending Accounts; Life Insurance and AD&D, including Optional Life; Long Term Disability Insurance; Stock Option Grants; Associate Stock Purchase Plan; and the 401(k) Plan Account.

Please remember that you continue to be bound by the Confidentiality Agreement you signed upon your employment with E*TRADE FINANCIAL.

If you have any questions regarding the enclosures, please feel free to call me directly at (646) 521-4532. We truly wish you success in your future career endeavors.

Sincerely,

Shanae McGrath

Shanae McGrath Senior HR Coordinator

cc: Employee File



October 8, 2004

Sean Gaffey 938 Willow Avenue #3 Hoboken, NJ 07030

Dear Sean:

On behalf of E*TRADE Securities LLC (the "Company"), I am pleased to offer you the position of Retail Sales Representative. You will report to Nicole Sherrod and will start on October 26th 2004. This offer of employment is contingent upon the Company obtaining acceptable/verifiable references from your prior employers.

Your salary will be \$1538.46 biweekly (\$40,000 on an annualized basis), paid once every other Friday in accordance with the Company's normal payroll procedures, less all required withholding, such as federal and state taxes.

Employment with the Company is contingent upon the completion of a background investigation, including a criminal conviction record check, the results of which shall be to the Company's satisfaction. In addition, employment in this position beyond 60-days is subject to a National Association of Securities Dealers background check, the results of which shall be to the Company's satisfaction. Also, for purposes of federal immigration law, you will be required to provide the company documentary evidence of your identity and eligibility for employment in the United States within 3-business days of your date of hire. In addition, your employment is contingent upon your execution of our standard Agreement Regarding Employment and Proprietary Information and Inventions, a copy of which is enclosed.

You will be eligible for standard Company benefits, a summary of which are described on the external website www.etrade.com, subject to the conditions and requirements of those benefit plans. Benefits that you qualify and sign up for will go into affect your first day of employment with the Company. You must enroll for your benefits within 31 calendar days from your hire date. Employees who do not elect their benefits online within 31 calendar days must wait until the next open enrollment period to participate. For information on benefits, go to:

https://us.etrade.com/e/t/home/aboutus?gxml=ris benefits.html.

In addition, you will receive a special discount on trading commissions for trades made through an E*TRADE FINANCIAL account, if you wish to set one up. As with any company, the Company's benefits may change from time-to-time.

As a Retail Sales Representative you will be eligible for a 2005 incentive plan based on your achievements of certain financial and operational goals. Your payment in the incentive plan will be contingent upon your achievement of these financial and operational goals, which will be determined for the 2005 calendar year by December 31, 2004.

As a participant in the Bonus Program, you will not be eligible to participate in any other E*TRADE compensation or bonus programs (other than the E*TRADE stock option and stock purchase plans, as may exist from time to time and at the sole discretion of E*TRADE).

You will continue to have the opportunity to earn incentives according to the WSA Retail Sales incentive plan during the remainder of 2004. If your 4th quarter 2004 payout from this plan does not exceed six thousand dollars (\$6,000.00), you will be paid this amount as a minimum payout if you fulfill the activities outlined on Schedule A attached as determined by E*TRADE FINANCIAL management. The payout will occur on or about January 30, 2005. As an employee of E*TRADE FINANCIAL you will no longer participate or receive any compensation incentive opportunities from WSA starting from your hire date forward.

In addition to the compensation and benefits described in this letter, we will recommend to the Board of Directors or its appropriate committees that you be granted an option to purchase five hundred (500 shares of E*TRADE FINANCIAL common stock under the Company's stock option plan. The option would vest and become exercisable in accordance with the Company's standard 4-year annual vesting schedule. The exercise price of the option will be equal to the average of the high and low trading price for E*TRADE FINANCIAL common stock on the date of the grant. Stock option grant requests are ordinarily considered on Fridays, and your grant would likely be considered and approved within the first few weeks of your employment. If approved by the Board or the appropriate committee, your option grant will be subject to your acceptance of the terms and conditions of our standard stock option agreement.

As you will see on the E*TRADE FINANCIAL website www.etrade.com, you will be automatically enrolled in the Company 401(k) Plan ("Plan") on your date of hire. Unless you elect otherwise, 3% of your pre-tax compensation will automatically be withheld from your paycheck and contributed to the Plan each payday. E*TRADE FINANCIAL will match employee contributions at 50% up to the first 5% of your contribution (up to a maximum of 2.5% contribution rate) immediately upon participation in the plan. The company match is 100% vested after 3 years of service.

The 401(k) contributions will begin on the pay period following your completion of the online benefits enrollment or after your 31st day of employment (whichever occurs first.) You have the right to stop, change, increase or decrease the contribution to the plan at any time.

In any case, should you accept this offer, your employment is "at-will" meaning it will be for no specified period. As a result, you will be free to resign at any time for any reason or for no reason, as you deem appropriate. The Company will have a similar right and may conclude its employment relationship with you at any time for any reason, with or without cause. In addition, this means that the Company may modify or alter your position, duties, compensation and benefits at any time or impose discipline other than termination in its discretion. Although other company policies may change from time-to-time, our policy of at-will employment may be changed only in writing entered into for that purpose and signed by the Chairman and/or CEO of the Company.

In the event of any dispute or claim arising out of or relating to your employment relationship with the Company, this agreement, or the termination of your employment with the Company for any reason (including, but not limited to, any claims of breach of contract, wrongful termination or age, sex, race, national origin, disability, religious or other discrimination, harassment or retaliation) (collectively referred to hereafter as "Disputes"), you and the Company agree that all such Disputes shall be fully, finally and exclusively resolved by binding arbitration to the fullest extent permitted by law. The arbitration will be conducted by the American Arbitration Association in [San Mateo County, Californial or such other location that may be agreed to by you and the Company in writing. You and the Company hereby waive your respective rights to have any Disputes tried to a judge or jury. You and the Company further agree that if, and only if, this arbitration agreement shall, for any reason, be held to be invalid or unenforceable, then any Dispute between us shall be resolved by means of a court trial (involving a judge but no jury) conducted by the state or federal court for the county in which the Company office in which you most often work is located. If you do not work out of a Company office, then the Company office from which you are paid will be used to determine the county for the locale of the court trial. You and the Company further agree that such courts will have personal and subject matter jurisdiction over all Disputes. You understand and agree that you and the Company are hereby irrevocably waiving any and all rights to have any Dispute tried by a jury.

Employee Init	:ial:
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Company Initial:

The employment terms in this letter, the Code of Conduct, the Proprietary Information Agreement and the stock option agreement referred to above constitute the entire agreement between you and the Company regarding the terms and conditions of your employment and supersede any other agreement or promise that may have been made to you by anyone, whether verbal or written. The provisions of this agreement regarding "at will" employment and dispute resolution may only be modified by a document signed by you and the Chairman and CEO of the company.

As outlined in the Code of Professional Conduct (you will receive this at orientation), all employees of E*TRADE FINANCIAL Corp and its domestic subsidiaries are required to maintain their brokerage accounts at E*TRADE Securities LLC. All brokerage accounts must be maintained by E*TRADE Securities LLC. You will be required to transfer all of your existing brokerage accounts to E*TRADE Securities LLC, and you may not open any new accounts elsewhere.

We are excited about having you join our Company team. To accept our offer under the terms described above, please sign and date this letter, return the original (and all accompanying documents) to me within five business days and keep a copy for your files. New Hire orientation will be held on the first Monday of your hire date. The Compliance portion of your New Hire orientation is MANDATORY and affects your ability to trade your E*TRADE FINANCIAL stock. You must attend this portion of the meeting, and will be required to sign an attendance list as verification.

Sincerely,

Heather Larson

Manager, Human Resources

Accepted by:

Schedule A

Retail Sales Representative

You will be responsible for the following activities:

- Communicating changes to current WSA customer population
 Facilitating open dialogue with E*TRADE management
 Making every attempt to retain all current Wall Street Access customers

AGREEMENT REGARDING EMPLOYMENT AND PROPRIETARY INFORMATION AND INVENTIONS

The following Agreement confirms certain terms of my employment with E*TRADE Financial Corporation (hereafter referred to as "the Company") and all of its subsidiaries, including without limitation E*TRADE Brokerage Holdings, Inc., E*TRADE Securities LLC, E*TRADE Clearing LLC, E*TRADE Professional Trading, LLC, Engelman Securities, Inc., E*TRADE Bank, E*TRADE Mortgage Corporation, E*TRADE Consumer Finance Corporation. Thor Credit Corporation, E*TRADE Settlement Services, Inc., Lending Link LLC, E*TRADE Insurance Services, Inc., E*TRADE Financial Corporate Services, Inc., Dempsey & Company LLC, E*TRADE Global Asset Management, and E*TRADE Capital Holdings, Inc., and is a material part of the consideration for my employment by the Company and the compensation received by me from the Company from time to time. The headings contained in this Agreement are for convenience only, have no legal significance, and are not intended to change or limit this Agreement in any manner whatsoever.

PROPRIETARY INFORMATION AND INVENTIONS

A. Definitions

"Proprietary Information"

I understand that the Company possesses and will possess Proprietary Information, which is important to its business. For purposes of this Agreement, "Proprietary Information" is information that was developed, created, or discovered by or on behalf of the Company, or which became or will become known by, or was or is conveyed to the Company, which has commercial value in the Company's business.

"Proprietary Information" includes, but is not limited to, software programs and subroutines, source and object code, algorithms, trade secrets, designs, technology, know-how, processes, data, ideas, techniques, inventions (whether patentable or not), works of authorship, formulas, business and product development plans, vendor lists, customer lists, terms of compensation and performance levels of Company employees, and other information concerning the Company's actual or anticipated business, research or development, or which is received in confidence by or for the Company from another person or entity.

All Proprietary Information and all patents, patent rights, copyrights, trade secret rights, trademark rights and other rights (including, without limitation, intellectual property rights) anywhere in the world in connection therewith is and shall be the sole property of the Company. I understand that my employment creates a relationship of confidence and trust between the Company and me with respect to Proprietary Information.

2. "Company Documents and Materials"

I understand that the Company possesses or will possess "Company Documents and Materials" which are important to its business. For purposes of this Agreement, "Company Documents and Materials" means any kind of written. typewritten, printed, or electronic media whatsoever that contain or embody Proprietary Information or any other information concerning the business, operations or plans of the Company, whether such documents, media or items have been prepared by me or by others.

"Company Documents and Materials" include, but are not limited to, blueprints, drawings, photographs, charts, graphs, notebooks, memoranda, papers, files, forms, contracts, manuals, handbooks, agreements, correspondence, customer lists, computer disks, electronic records or representations of any kind, information stored on computer (including but not limited to electronic mail) or on any type of computer readable storage media, software programs, tapes or printouts, sound recordings, sample products, prototypes and models. All Company Documents and Materials are and shall be the sole property of the Company.

B. Assignment of Rights

All Proprietary Information and all patents, patent rights, copyrights, trade secret rights, trademark rights and other rights (including, without limitation, intellectual property rights) anywhere in the world in connection therewith is and shall be the sole property of the Company. I hereby assign to the Company any and all rights, title and interest I may

Rev. 10-13-04 E*TRADE Financial Page 1 have or acquire in such Proprietary Information.

C. Protection of Proprietary Information

At all times, both during my employment by the Company and after its termination, I will keep in confidence and trust and will not use or disclose any Proprietary Information or anything relating to it without the prior written consent of an officer of the Company, except as may be necessary in the ordinary course of performing my duties for the Company.

D. Maintenance and Return of Company Documents and Materials

I agree to make and maintain adequate and current written records, in a form specified by the Company, of all inventions, trade secrets and works of authorship assigned or to be assigned to the Company pursuant to this Agreement.

I agree that during my employment by the Company, I will not remove any Company Documents and Materials from the business premises of the Company or deliver any Company Documents and Materials to any person or entity outside the Company, except as I am required to do in connection with performing the duties of my employment. I further agree that, immediately upon the termination of my employment by me or by the Company for any reason, or during my employment if so requested by the Company, I will return all Company Documents and Materials, apparatus, equipment and other physical property, or any reproduction of such property, excepting only (i) my personal copies of records relating to my compensation; (ii) my personal copies of any materials previously distributed generally to stockholders of the Company; and (iii) my copy of any documents I signed relating to obtaining or holding employment with the Company including this Agreement.

E. Disclosure of Inventions to the Company

I will promptly disclose in writing to my immediate supervisor or to such other person designated by the Company all "Inventions," which includes, without limitation, all software programs or subroutines, source or object code, algorithms, improvements, inventions, works of authorship, trade secrets, technology, designs, formulas, processes, techniques, know-how and data, whether or not patentable, made or discovered or conceived or reduced to practice or developed by me, either alone or jointly with others, during the term of my employment.

I will also disclose to the President of the Company all Inventions made, discovered, conceived, reduced to practice, or developed by me within six (6) months after the termination of my employment with the Company which resulted, in whole or in part, from my prior employment by the Company. Such disclosures shall be received by the Company in confidence (to the extent such Inventions are not assigned to the Company pursuant to Section (F) below) and do not extend the assignment made in Section (F) below.

F. Right to Inventions and Ideas

1. Assignment of Inventions to the Company

I agree that all Inventions which I make, discover, conceive, reduce to practice or develop (in whole or in part, either alone or jointly with others) during my employment shall be the sole property of the Company and shall be assigned to the Company to the maximum extent permitted by Section 2870 of the *California Labor Code* or any like statute of any other state. Section 2870 provides as follows:

- a. Any provision in an employment agreement which provides that an employee shall assign, or offer to assign, any of his or her rights in an invention to his or her employer shall not apply to an invention that the employee developed entirely on his or her own time without using the employer's equipment, supplies, facilities, or trade secret information except for those inventions that either:
 - (1) Relate at the time of conception or reduction to practice of the invention to the employer's business, or actual or demonstrably anticipated research or development of the employer.
 - (2) Result from any work performed by the employee for his employer.

b. To the extent a provision in an employment agreement purports to require an employee to assign an invention otherwise excluded from being required to be assigned under subdivision (a), the provision is against the public policy of this state and is unenforceable.

This assignment shall not extend to Inventions, the assignment of which is prohibited by Labor Code Section 2870.

2. Works Made for Hire

The Company shall be the sole owner of all patents, patent rights, copyrights, trade secret rights, trademark rights and all other intellectual property or other rights in connection with Inventions that are the sole property of the Company. I further acknowledge and agree that such Inventions, including, without limitation, any computer programs, programming documentation, and other works of authorship, are "works made for hire" for purposes of the Company's rights under copyright laws. I hereby assign to the Company any and all rights, title and interest I may have or acquire in such Inventions. If in the course of my employment with the Company, I incorporate into a Company product, process or machine a prior Invention owned by me or in which I have interest, the Company is hereby granted and shall have a nonexclusive, royalty-free, irrevocable, perpetual, sublicensable, worldwide license to make, have made, modify, use, market, sell and distribute such prior Invention as part of or in connection with such product, process or machine.

3. Best Efforts

I agree to perform, during and after my employment, all acts deemed necessary or desirable by the Company to permit and assist it, at the Company's expense, in further evidencing and perfecting the assignments made to the Company under this Agreement and in applying for, obtaining, maintaining, defending and enforcing patents, patent rights, copyrights, trademark rights, trade secret rights or any other rights in connection with such Inventions and improvements thereto in any and all countries. Such acts may include, but are not limited to, execution of documents and assistance or cooperation in legal proceedings. I hereby irrevocably designate and appoint the Company and its duly authorized officers and agents, as my agents and attorney-in-fact to act for and on my behalf and instead of me, to execute and file any documents, applications or related findings and to do all other lawfully permitted acts to further the purposes set forth above in this subsection (3), including, without limitation, the perfection of assignment and the prosecution and issuance of patents, patent applications, copyright applications and registrations, trademark applications and registrations or other rights in connection with such Inventions and improvements thereto with the same legal force and effect as if executed by me.

4. Assignment or Waiver of Moral Rights

Any assignment of copyright hereunder (and any ownership of a copyright as a work made for hire) includes all rights of attribution, integrity, disclosure and withdrawal and any other rights that may be known as or referred to as "moral rights" (collectively "Moral Rights"). To the extent such Moral Rights cannot be assigned under applicable law and to the extent the following is allowed by the laws in the various countries where Moral Rights exist, I hereby waive such Moral Rights and consent to any action of the Company that would violate such Moral Rights in the absence of such consent.

5. List of Inventions

I have attached hereto as Exhibit A a complete list of all Inventions or improvements to which I claim ownership and that I desire to remove from the operation of this Agreement, and I acknowledge and agree that such list is complete. If no such list is attached to this Agreement, I represent that I have no such Inventions and improvements at the time of signing this Agreement.

G. Non-Solicitation of Company Employees

During the term of my employment and for one (1) year thereafter, I will not encourage or solicit any employee, consultant, or contractor of the Company to leave or diminish their relationship with the Company for any reason or to accept employment, consultancy or a contracting relationship with any other company. As part of this restriction, I will not interview or provide any input to any third party regarding any such person during the period in question. However, this obligation shall not affect any responsibility I may have as an employee of the Company with respect to the bona fide hiring and firing of Company personnel.

H. Non-Solicitation of Company Customers

During the term of my employment and for two (2) years thereafter, I will not, on behalf of myself or anyone else, directly or indirectly encourage or solicit or attempt to encourage or solicit any customers, clients, partners or affiliates of the Company to terminate or diminish their relationship with the Company. I understand that I have an obligation not to use any customer lists or information from customer lists (which are included in the definition of Proprietary Information above) to directly or indirectly solicit business from any Company customer, whether for myself or anyone else.

I. Safeguard of Non-public Customer Information Pursuant to Gramm-Leach-Bliley Act

Pursuant to the Gramm-Leach-Bliley Act, I understand that any and all non-public customer information I obtain during the course of my employment shall be held in strict confidence during and subsequent to my period of employment with the Company. At no time shall I share any such information with either coworkers or any other party who does not have access to similar information or who is not involved in the customer transaction without the express approval of Legal or Compliance.

J. Company Authorization for Publication

Prior to my submitting or disclosing for possible publication or dissemination outside the Company any material prepared by me that incorporates information that concerns the Company's business or anticipated research, I agree to deliver a copy of such material to an officer of the Company for his or her review. The Company agrees to notify me in writing whether the Company believes such material contains any Proprietary Information or Inventions, and I agree to make such deletions and revisions as are reasonably requested by the Company to protect its Proprietary Information and Inventions. I further agree to obtain the written consent of the Company prior to any review of such material by persons outside the Company.

K. Duty of Loyalty

I agree that, during my employment with the Company, I will not provide consulting services to or become an employee of, any other firm or person engaged in a business in any way competitive with the Company or involved in the design, development, marketing, sale or distribution of any networking or software products, without first informing the Company of the existence of such proposed relationship and obtaining the prior written consent of my manager and the Human Resource Manager responsible for the organization in which I work.

L. Former Employer Information

I represent that I am not subject to any restrictive covenants and obligations with any prior employers or businesses that would prevent me from fully performing my duties for the Company. I further represent that my performance of all the terms of this Agreement and as an employee of the Company does not and will not breach any agreement to keep in confidence proprietary information, knowledge or data acquired by me in confidence or in trust prior to my employment by the Company, and I will not disclose to the Company or induce the Company to use any confidential or proprietary information or material belonging to any previous employers or others. I have not entered into and I agree I will not enter into any agreement, either written or oral, in conflict herewith or in conflict with my employment with the Company. I further agree to conform to the rules and regulations of the Company.

M. At-Will Employment

I agree and understand that employment with the Company is "at-will," meaning that it is not for any specified period of time and can be terminated by me or by the Company at any time, with or without advance notice, and for any or no particular reason or cause. I agree and understand that it also means that job duties, title and responsibility and reporting level, compensation and benefits, as well as the Company's personnel policies and procedures, may be changed at any time at-will by the Company. I understand and agree that nothing about the fact or the content of this Agreement is intended to, nor should be construed to, alter the at-will nature of my employment with the Company.

I understand and agree that this Agreement, together with the offer letter from the Company to me, is the complete agreement between the Company and me regarding the nature of my employment with the Company. I also

understand and agree that the at-will nature of employment with the Company can only be changed by the Company President and the VP of Human Resources in an express writing signed and dated by them and by me.

N. Severability

I agree that if one or more provisions of this Agreement are held to be unenforceable under applicable law, such provisions shall be limited or modified, if possible, to permit the provision to be enforced to the maximum extent possible, or, if such modification is not possible, then the provision shall be excluded from this Agreement and the balance of the Agreement shall be interpreted as if such provision were so excluded and shall be enforceable in accordance with its terms.

O. Authorization to Notify New Employer

- 1. I hereby authorize the Company to notify my new employer about my rights and obligations under this Agreement following the termination of my employment with the Company.
- 2. This Agreement sets forth the entire agreement and understanding between the Company and me relating to the subject matter herein and merges all prior discussions between us, including but not limited to any and all statements made by any officer, employee or representative of the Company regarding the Company's financial condition or future prospects. I understand and acknowledge that, except as set forth in this Agreement, (i) no other representation or inducement has been made to me, (ii) I have relied on my own judgment and investigation in accepting my employment with the Company, and (iii) I have not relied on any representation or inducement made by any officer, employee or representative of the Company. No modification of or amendment to this Agreement nor any waiver of any rights under this Agreement will be effective unless in a writing signed by the President of the Company and me. I understand and agree that any subsequent change or changes in my duties, salary or compensation will not affect the validity or scope of this Agreement.

P. Effective Date

This Agreement shall be effective as of the first day of my employment with the Company and shall be binding upon me, my heirs, executor, assigns and administrators and shall inure to the benefit of the Company, its subsidiaries, successors and assigns.

Q. Governing Law

Although I may work for the Company outside of California or the United States, I understand and agree that this Agreement shall be interpreted and enforced in accordance with the laws of the State of California.

I HAVE READ THIS AGREEMENT CAREFULLY AND I UNDERSTAND AND ACCEPT THE OBLIGATIONS WHICH IT IMPOSES UPON ME WITHOUT RESERVATION. NO PROMISES OR REPRESENTATIONS HAVE BEEN MADE TO ME TO INDUCE ME TO SIGN THIS AGREEMENT. SIGN THIS AGREEMENT VOLUNTARILY AND FREELY.

Employee's Signature

Employee's Name - Printed

Date

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EXHIBIT A

1. The following is a complete list of all Inventions or improvements relevant to the subject matter of my employment by the Company that have been made or discovered or conceived or first reduced to practice by me or jointly with others prior to my employment by the Company that I desire to remove from the operation of the Company's Proprietary Information and Inventions Agreement:

No inventions or improvements. See below: Any and all inventions regarding: Additional sheets attached.

2. I propose to bring to my employment the following materials and documents of a former employer:

No materials or documents
See-below:

Employee's Signature

Date

CODE OF PROFESSIONAL CONDUCT

ACKNOWLEDGEMENT

I hereby acknowledge that I have received a copy of the E*TRADE FINANCIAL Code of Professional Conduct (the "Code") and that I have reviewed the contents of the Code.

I understand that as an E*TRADE FINANCIAL employee I am responsible for complying with all laws and regulations applicable to our business and all provisions of the Code, as well as all other corporate policies and procedures.

After reviewing the Code, if I realize there are any provisions with which I have not complied (for example, maintaining a brokerage or trading account with an outside broker without prior approval from Compliance, participating in an investment club or serving on the board of directors of an outside entity without prior approval from Compliance), I will promptly notify the appropriate department so that the matter can be brought in line with the requirements of the Code.

I understand that if I have any questions about the application of the Code in any situation, I should seek guidance from my supervisor or appropriate E*TRADE FINANCIAL department.

Dated:

Employee's Sig

Employee's Name Printed

ACKNOWLEDGEMENT

I hereby acknowledge that I have received a copy of the E*TRADE FINANCIAL Code of Professional Conduct (the "Code") and that I have reviewed the contents of the Code.

I understand that as an E*TRADE FINANCIAL employee I am responsible for complying with all laws and regulations applicable to our business and all provisions of the Code, as well as all other corporate policies and procedures and that it is not an excuse to claim that I did not read or understand a provision of the Code.

After reviewing the Code, if I realize there are any provisions with which I have not complied (for example, maintaining a brokerage or trading account with an outside broker without prior approval from Compliance, participating in an investment club or serving on the board of directors of an outside entity without prior approval from Compliance), I will promptly notify the appropriate department so that the matter can be brought in line with the requirements of the Code.

I understand that if I have any questions about the application of the Code in any situation, I should immediately seek guidance from my supervisor, Legal or Compliance.

Dated:

Employee's Signature

Employee's Name Printed

February 22, 2008

Mr. Jeff Wimer E*Trade Securities LLC 135 E. 57th Street New York, NY 10022

Re: Resignation of Employment

Dear Mr. Wimer:

Effective immediately, I resign my position with E*Trade Securities LLC ("E*Trade"). In the event that E*Trade has any dispute with me, I demand that it be resolved through arbitration proceedings.

I have retained the law firm of Wolff & Samson PC. Any communications relating to this matter, including but not limited to any official action on the part of E*Trade, therefore should be directed to John O. Lukanski, Esq., One Boland Drive, West Orange, New Jersey 07052. Mr. Lukanski's telephone number is (973) 530-2073. I expect any communications or actions by E*Trade to be brought promptly to the attention of my attorneys.

Very truly yours,



February 25, 2008

Via Federal Express

Mr. Sean Gaffey 550 Gregory Ave Apt B7 Weehawken Township, NJ 07087

Re: Change of Employment

Dear Mr. Gaffey:

In conjunction with your resignation effective February 22, 2008, enclosed are the following documents:

- 1) Notice to Employee as to Change in Relationship two copies, one for your records and one for you to sign and return in the self-addressed envelope provided.
- 2) Overview of Termination Options regarding all benefit plans, including: Medical/Dental/ Vision--COBRA information; Flexible Spending Accounts; Life Insurance and AD&D, including Optional Life; Long Term Disability Insurance; Stock Option Grants; Associate Stock Purchase Plan; and the 401(k) Plan Account.

Please remember that you continue to be bound by the Confidentiality Agreement you signed upon your employment with E*TRADE FINANCIAL.

If you have any questions regarding the enclosures, please feel free to call me directly at (646) 521-4532. We truly wish you success in your future career endeavors.

Sincerely,

Shanae McGrath

Shanae McGrath Senior HR Coordinator

cc: Employee File